

TORRES STRAIT FINFISH FISHERY WORKING GROUP	Video Conference 7 March 2022
Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022	Agenda Item 1 For DISCUSSION and to PROVIDE ADVICE

RECOMMENDATIONS

1. That the Working Group (WG) **DISCUSS** and **PROVIDE ADVICE** on amendments to the *Torres Strait Fisheries (Finfish) Management Instrument 2020* (the Finfish Instrument provided at **Attachment A**) which are required to:
 - a) redefine the finfish *permanent closure* area (Western Line Closure), and
 - b) provide an exemption to the prohibition on taking, processing or carrying finfish for a licence granted under section 19(4A) of the *Torres Strait Fisheries Act 1984* (the Act) that authorises the taking of finfish in the finfish (reef line) fishery without the use of a boat. Although there are currently no licences granted under subsection 19(4A) of the Act, this will cover any future scenarios in which such licences are granted.

KEY ISSUES

Redefining the Western Line Closure

2. The proposal to remove or amend the *permanent closure area*¹ in the Finfish Fishery (commonly referred to as the 'Western Line Closure') to permit line fishing in this area is a long standing issue that has been considered by the PZJA and its advisory groups for more than 10 years.
3. Consultations with traditional inhabitant communities have resulted in widespread support to amend the *permanent closure area* to allow commercial fishing for finfish (reef line species) in the area north of the southernmost point of Buru (Turnagain) Island. GIS maps and coordinates are at **Attachments B-D**.
4. Having regard to the advice from Finfish Fishery Resource Assessment Group (FFRAG) and FFWG on the risks of opening this area to commercial fishing and the management measures needed to support a responsible opening, the PZJA agreed in-principle to amend the *permanent closure area* as described above at its meeting on 11 February 2022.
5. This agreement was subject to further consideration by the FFWG on the amendments required to the Finfish Instrument. AFMA is seeking FFWG advice on the required changes to section 15 of the Finfish Instrument to give effect to agreed redefining of the Western Line Closure.

Community fishing without a boat

6. The Finfish Instrument, which sets out a series of prohibitions subject to certain exemptions, currently provides an exemption to the prohibition on taking, processing or carrying finfish for a person who holds a licence granted under section 19(2) (authorising

¹ the *permanent closure area* (Western Line Closure) prohibits fishing in the finfish (reef line) fishery in the area of the fishery west of Longitude 142°31'49" E.

the taking of fish with the use of a boat) or 19(3) (authorising the carrying of fish with the use of a boat) of the Act.

7. Current arrangements, whether intended or not, prohibit community fishing by a person without the use of a boat with a licence granted under section 19(4A). This is because:
 - a. *Community Fishing Notice No. 1*² (which is a declaration made under section 17 of the Act) purports to prohibit community fishing unless the person holds a licence that entitles them to fish with the use of a boat.
 - b. Other than the Tropical Rock Lobster³ and Beche-de-mer⁴ Management Instruments, no other legislative instruments made under section 16 make exemptions to the prohibition on commercial fishing in a fishery for persons fishing without the use of a boat (section 19(4A)).
8. Although there are currently no licences granted under subsection 19(4A) of the Act, AFMA proposes to amend the current Finfish Instrument to provide an exemption to the prohibitions that will extend to persons who also hold a licence granted under section 19(4A) of the Act that authorises the taking of finfish in the finfish (reef line) fishery without the use of a boat.
9. This proposed amendment follows in-principle agreement from the PZJA at its meeting on 8 December 2021 to make necessary legislative amendments to allow the issue of licences for community fishing without a boat, subject to further consultation with stakeholders on the appropriate licensing arrangements on fishing without a boat to ensure they are fit for purpose.
10. It is intended that the amendment will cover any future scenarios in which 19(4A) licences are granted and is proposed in order to allow for such licencing arrangements to be established as necessary after stakeholder consultation has been conducted. This approach is consistent with both the TRL and Beche-de-mer Management Instruments and the TRL Management Plan⁵.

The Amendment Finfish Instrument

11. To give effect to the proposed changes above, legislative amendments are required to the Finfish Instrument. A copy of the draft amendments is provided at **Attachment E** (the Amendment Finfish Instrument), and further described in the accompanying Explanatory Statement at **Attachment F**.
12. The Amendment Finfish Instrument will:
 - a. Amend the definition of a *finfish licensed person* in section 4 of the Finfish 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 those fish, in areas of Australian jurisdiction.
 - b. Amend the *permanent closure* area as defined in section 15 of the Finfish 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.
 - c. Retain all other regulations relating to the finfish fishery.
13. Advice from the WG on the Amendment Finfish Instrument will be considered by the PZJA in March 2022. If agreed to by the PZJA, the Amendment Finfish Instrument will come into effect on the day after registration on the Federal Register of Legislation.

² <https://www.legislation.gov.au/Details/F2008B00622>

³ *Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018*

⁴ *Torres Strait Fisheries (Beche-de-mer) Management Instrument 2022*

⁵ *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*

BACKGROUND

Redefining the Western Line Closure

Outcomes from the Finfish Fishery Resource Assessment Group meeting - 14-15 October 2021

14. At its **meeting on 14-15 October 2021**, the RAG reviewed a 'plan of action' to progress targeted communications in Gudamalugal communities on the recommended opening of the Western Line Closure.
15. The RAG reviewed the plan of action for communications and approval process for removing the closure. As discussed at previous meetings the RAG noted the following points that will need to be addressed in the lead up to the recommended opening:
 - a) The area of the opening will need to be defined;
 - b) What are the aspirations of the Gudamalugal communities for a commercial reef line fishery?
 - c) What species does the community want to target? Are minimum size limits required for currently unregulated fish species?
 - d) What are the merits of the various research options available to support the opening of the fishery?
 - e) What are the likely implications for Traditional fishing? These will need to be mitigated.

Outcomes from the Finfish Fishery Resource Assessment Group meeting - 18-19 November 2021

16. At its **meeting on 18-19 November 2021**, the RAG noted advice from industry members that stakeholders are frustrated with the seeming lack of progress towards opening the Western Line Closure. The RAG noted these frustrations were most recently delivered at the TSRA Board meeting held two weeks previously. Accordingly, industry members sought clarification of the work plan considered at the RAG's previous meeting (meeting 9) and advised of their initiative to travel to Gudamalugal communities between 6 and 10 December 2021 with the support of the TSRA and Malu Lamar. The purpose of the trips being to communicate the previously identified considerations to support the opening (as identified at previous RAG meetings).
17. The RAG recalled that the recommended plan to consult with Gudamalugal communities was not focused on whether to open the fishery or not, but on developing the conditions or arrangements for the opening.
18. The RAG noted that the timeline agreed to at FFRAG 9 scheduled community visits to take place in March 2022. This timeline was developed at the time by AFMA and industry members previously identified to undertake the visits (AFMA and traditional inhabitant members). These meetings were subsequently cancelled due to COVID19 travel restrictions.
19. Industry members recommended that the 'western line opening' be tabled for approval by the PZJA at its first meeting in 2022. AFMA advised that as part of any recommendation to the PZJA to change the closure, it is necessary to provide the PZJA with advice on likely risks (and benefits) and corresponding management strategies to address those risks. The key purpose of the meetings proposed with Gudamalugal communities was to

engage those communities directly in the identification, consideration and management of potential risk to fish stocks in the opening area.

20. The Chair asked the RAG scientific members whether there are any issues from a scientific assessment perspective which need to be addressed before the opening. The Scientific members reiterated previous advice that key to having an accurate understanding risk is knowing the likely species to be targeted, the level of fishing effort expected and the size and productivity of the resources to be targeted. Noting previous industry advice that it is expected that the fishing effort will be limited at least in the short term, the scientific members reiterated their advice that an adaptive management approach may be appropriate.

21. That is to:

- a) allow fishing on the expectation effort will initially be limited;
- b) collect and monitor accurate catch information to learn more about target species and effort (what species, where is fishing being conducted and when). Trends in this data (eg CPUE) can then be assessed. Collecting comprehensive CDR data as soon as the fishery opens is vital, as this will ensure that any potential 'new' species are recorded accurately. This is particularly important for vulnerable species such as black jewfish;
- c) implement additional biological monitoring as soon as possible (length and age). Collecting this information early in the development of new fisheries provides invaluable data for future assessments; specifically to understand the productivity of the stocks;
- d) assess the need for a fishery independent survey once more is known about the likely nature and extent of the fishery; and
- e) develop a harvest strategy to guide management of the developing fishery. As more is known about the likely nature and extend of the fishery, additional management measures may be required to ensure the sustainability of fishing into the future.

Outcomes from the Finfish Fishery Working Group meeting - 25 November 2021

22. At its meeting on 25 November 2021, the WG noted the proposed work plan to address the recommended opening of the 'western line closure' area which was tabled at FFRAG 9 meeting (14-15th October). This work plan was progressed as an action from the FFWG meeting on 25 November 2020.
23. The WG noted that advice was received from Traditional Inhabitant members at FFRAG 10 meeting (18-19 November 2021) that stakeholders are frustrated with the seeming lack of progress towards the opening. Accordingly, Traditional Inhabitant members sought clarification of the work plan considered at the RAG's previous meeting (FFRAG 9) and advised of their initiative to travel to Gudamalulgal communities between 6 and 10 December 2021 with the support of the TSRA and Malu Lamar.
24. Traditional inhabitant members advised the WG that the purpose of these meetings is to communicate the identified considerations to support the opening (as identified at previous RAG meetings). The outcomes from discussions at the current WG meeting would also be tabled at these meetings.

25. The WG noted RAG traditional inhabitant members' recommendation that the western line opening be tabled for approval by the PZJA at its first meeting of 2022. WG traditional inhabitant members also recommended the opening be tabled for approval at the first PZJA meeting of 2022.
26. The representative for Malu Lamar raised the seriousness of the unemployment issue in these communities. There are perceived barriers to economic development, and that this is creating structured poverty.
27. The WG noted AFMA advice from FFRAAG 10 that as part of any recommendation to the PZJA to change the closure, it is necessary to provide the PZJA with advice on likely risks (and benefits) and corresponding management strategies to address those risks. The key purpose of the meetings proposed with Gudamalulgal communities was to engage those communities directly in the identification, consideration and management of potential risk to fish stocks in the opening area.
28. The WG noted that scientific members advised at FFRAAG 10 (18-19 November 2021) that collecting robust catch data as soon as the fishery opens is crucial for the effective monitoring of the stock.
29. The Malu Lamar representative advised the WG that there has been an agreement reached between the relevant Native Title groups that the southern boundary line for the opening area should be drawn as a straight line of latitude in line with the southernmost point of Turnagain (Buru) Island.
30. As previously identified, the WG noted that meetings with Gudamalulgal communities should aim to educate the community about the importance of collecting comprehensive CDR data upon fishery opening. Specifically, this pertains to a high uptake of the voluntary 'Part B – Effort' section of the CDR form. This section already has a very high completion rate across the existing finfish fishery.
31. The WG recommended that information guides be produced and distributed before the opening to provide information to fishers on species identification and regulations.

Outcomes from the Protected Zone Joint Authority meeting - 11 February 2022

32. The Torres Strait Regional Authority (TSRA) advised the PZJA that an agreement had been reached between stakeholders that the prohibition area be amended to waters commencing south of Latitude 09°34' 31" S and west of Longitude 142°31'49" E. The TSRA Fisheries Advisory Committee also supported the change and requested the Western Line amendment be given priority.
33. The PZJA noted that it is anticipated that 18 to 20 fishers from local islands would access the area on a part time basis. This equates to around 10-12 full time traditional inhabitant boat (TIB) fishers.
34. The PZJA were advised that face-to-face communications occurred on Saibai, Boigu and Dauan Islands between 7-13 December 2021 in order to confirm an understanding about the possible impacts of commercial finfish fishing on traditional fishing.
35. Community attendance at face-to-face meetings were supported by further one-on-one briefings of community members, managed exclusively by Torres Strait Islanders and island community representatives. Attendance at these briefings were: Saibai 26, Boigu 58, Dauan 9.

36. The Chairperson of Malu Lamar attended the Saibai and Boigu meetings and offered opportunity to raise any concerns about Native Title rights or concerns about traditional fishing, which he offered to prosecute on their behalf. However, none were raised at either location and the Malu Lamar Chairperson openly supported an amendment to the *permanent closure* area to the south of the southernmost point of Buru/Turnagain Island.
37. **The PZJA agreed in principle** to amend the *permanent closure* 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.

Community fishing without a boat

38. Community fishing is defined in the *Torres Strait Fisheries Act 1984* (the Act) as commercial fishing carried on by a person who is both a traditional inhabitant and an Australian citizen.
39. Although likely small-scale, a level of fishing is carried out by traditional inhabitants fishing without the use of a boat. This includes those who walk on reef flats collecting species such as sea cucumbers.
40. AFMA has received an increasing number of inquiries from traditional inhabitant fishers wishing to hold a fishing licence despite not having access to a fishing boat. Such interest may be linked to the introduction of the mandatory fish receiver system on 1 December 2017, which requires fish receivers to only receive catches from a licenced fisher.
41. Current arrangements are a likely barrier to participating in fisheries for some traditional inhabitants. Given the PZJA has a policy of open access for traditional inhabitants, these arrangements are inconsistent with the objective of the Act (s 8(g)) to have regard, in developing and implementing licensing policy, to the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants.
42. While the legislative solution is relatively simple (amending *Community Fishing Notice No. 1*), AFMA recommends consultation with stakeholders on designing the actual licensing arrangements that would apply to ensure they are fit for purpose.



Torres Strait Fisheries (Finfish) Management Instrument 2020

The Protected Zone Joint Authority makes this instrument under paragraph 35(1)(a) of the *Torres Strait Fisheries Act 1984*, in accordance with a decision of its members under section 40 of the *Torres Strait Fisheries Act 1984*.

Dated 27 August 2020

Senator the Hon Jonathon Duniam
Member of the Protected Zone Joint Authority
Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Forestry and Fisheries
for and on behalf of the Protected Zone Joint Authority

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Part 1—Introduction

1 Name

This instrument is the *Torres Strait Fisheries (Finfish) Management Instrument 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	30 December 2020	30 December 2020

- Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.
- Note 2: A prohibition contained in this instrument comes into force on the day on which the instrument is published under subsection 16(9) of the Act or on such later day as is specified in the instrument (see subsection 16(4) of the Act).
- Note 3: The requirements of subsection 16(9) of the Act have been met prior to the registration of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 16 of the Act.

- Note: The Authority may exercise the powers of the Minister under section 16 of the Act in respect of a Protected Zone Joint Authority fishery: see paragraph 35(1)(a) of the Act.

4 Definitions

- Note: A number of expressions used in this instrument are defined in section 3 of the Act, including the following:
- (a) community fishing;
 - (b) fish;
 - (c) traditional inhabitant;
 - (d) traditional fishing.

In this instrument:

Act means the *Torres Strait Fisheries Act 1984*.

AEST means Australian Eastern Standard Time.

bait net means a fishing net:

- (a) known as a cast net that is not more than 6 metres in diameter and having a mesh size no larger than 28 millimetres; or
- (b) known as a mesh net or seine net that is not more than 400 metres in length and having a mesh size of at least 12 millimetres but not more than 45 millimetres.

barramundi means finfish of the species *Lates calcarifer*.

finfish means fish of the superclass Pisces other than:

- (a) mackerel; and
- (b) tuna (*Thunnus* spp.); and
- (c) skipjack tuna (*Katsuwonus pelamis*); and
- (d) fish of the family Bramidae (known as pomfrets); and
- (e) fish of the families Istiophoridae and Xiphiidae (known as billfish).

finfish fishery means the area of the finfish fishery prescribed in item 4 of the table in Schedule 2 to the Regulations.

finfish licensed person means a person who is a **licensed person** that is authorised to take, process or carry finfish in the finfish fishery.

fishing apparatus means any combination of:

- (a) hand held fishing lines; and
- (b) fishing rods; and
- (c) mechanically operated fishing reels and lines.

licensed person means a person who has been granted a licence under subsection 19(2) or 19(3) of the Act, or transferred such a licence under section 25 of the Act, that authorises the taking, processing or carrying of fish with the use of a boat.

line fishing methods means fishing by hand using fishing apparatus where:

- (a) each fishing line has no more than 6 hooks attached to it; and
- (b) no more than 3 fishing apparatus are being used for fishing from the licensed person's boat.

mackerel means species of fish that are:

- (a) grey mackerel (*Scomberomorus semifasciatus*); and
- (b) school mackerel (*Scomberomorus queenslandicus*); and
- (c) shark mackerel (*Grammatorcynus bicarinatus*); and

(d) Spanish mackerel (*Scomberomorous commerson*); and

(e) spotted mackerel (*Scomberomorus munroi*).

mackerel fishery means the area of the Spanish mackerel fishery prescribed in item 7 of the table in Schedule 2 to the Regulations.

mackerel licensed person means a person who is a licenced person that is authorised to take, process or carry mackerel in the mackerel fishery.

mesh net includes a fishing net suspended vertically through a water column that is known as a gill net, mesh net or seine net that is neither fixed nor hauled, but does not include a fishing net that is hauled by the use of a boat for taking fish.

mesh size means:

- (a) or a fishing net known as a knotted mesh net—the average distance, across 10 meshes at least 30 centimetres apart, between the inner edges of 2 diagonally opposite knots when the net is held taut; and
- (b) for a fishing net known as a knotless mesh net—the average distance, across 10 meshes at least 30 centimetres apart, between the inner edges of 2 diagonally opposite corners of a mesh when the net is held taut.

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 2020 be viewed on the website of the Federal Register of Legislation (<https://www.legislation.gov.au/Details/F2008B00750>).

Regulations means the *Torres Strait Fisheries Regulations 1985*.

seine net means a fishing net known as a beach net or a haul seine net.

shark means fish of the Subclass Elasmobranchii, excluding:

- (a) electric rays (Order Torpediniformes); and
- (b) skates (Order Rajiformes); and
- (c) stingrays (Order Myliobatiformes).

5 Length of a fish

- (1) For the purposes of this instrument, the length of a fish is taken to be the longest of the following measurements:
 - (a) the point of the snout to the end of the tail fin; or
 - (b) the point of the snout to the end of the caudal fin; or
 - (c) the tip of the lower jaw to the end of the tail fin; or
 - (d) the tip of the lower jaw to the end of the caudal fin.

6 Schedules

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.

7 Prohibition—general

- (1) The taking, processing or carrying of finfish, other than barramundi, by a person in the finfish fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

- (2) A person is exempt from the prohibition in subsection (1) when:

- (a) the person is a finfish licensed person; or
- (b) the person is a mackerel licensed person who:
 - (i) has taken finfish to use as bait with the use of a bait net; and
 - (ii) does not possess on their boat any more than 20 kilograms of finfish in addition to any finfish taken as bait under subparagraph (i); or
- (c) the person is a licensed person who is not a finfish licensed person or a mackerel licensed person, and the person does not possess on their boat any more than 20 kilograms of finfish or mackerel.

8 Prohibition—barramundi

- (1) The taking, processing or carrying of barramundi by a person in the finfish fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

- (2) Subject to section 16 of this instrument, a person is exempt from the prohibition in subsection (1) when:

- (a) the person is a finfish licensed person; and
- (b) the person is a traditional inhabitant conducting community fishing.

Note: Any barramundi that are taken by a person pursuant to this subsection must meet the minimum and maximum size limits outlined in section 10 of this instrument and be outside the seasonal closure outlined in section 16 of this instrument.

9 Prohibition—finfish subject to minimum length requirements

The taking, processing or carrying of finfish specified in an item in column 1 of the table that is shorter in length than the minimum length specified in column 2 of the table by a person in the finfish fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

Item	Column 1 Finfish	Column 2 Minimum length (centimetres)
1	Barramundi cod (<i>Cromileptes altivelis</i>)	45
2	Black kingfish (<i>Rachycentron canadum</i>)	75
3	Coral trout (<i>Plectropomus</i> spp.) other than ocean trout (<i>Plectropomus laevis</i>)	38
4	Dolphinfish (<i>Coryphaena</i> spp.)	45
5	Grass sweetlip (<i>Lethrinus laticaudis</i>)	30
6	Hussar (<i>Lutjanus adetii</i>)	25
7	Teraglin jew (<i>Atractoscion aequidens</i>)	38
8	Large-mouthed nannygai (<i>Lutjanus malabaricus</i>)	40
9	Large-scale sea perch (<i>Lutjanus johnii</i>)	35
10	Mangrove jack (<i>Lutjanus argentimaculatus</i>)	35
11	Moses perch (<i>Lutjanus russellii</i>)	25
12	Mulloy (<i>Argyrosomus japonicus</i>)	45
13	Pearl perch (<i>Glaucosoma scapulare</i>)	35
14	Purple tusk-fish (<i>Choerodon cephalotes</i>)	30
15	Red emperor (<i>Lutjanus sebae</i>)	55
16	Red throat emperor (<i>Lethrinus miniatus</i>)	38
17	Rosy job-fish (<i>Etelis</i> spp. and <i>Pristipomoides</i> spp.)	38
18	Silver jewfish (<i>Nibea soldado</i>)	45
19	Silver teraglin (<i>Otolithes ruber</i>)	30
20	Small-mouthed nannygai (<i>Lutjanus erthropterus</i>)	40
21	Snapper (<i>Pagrus auratus</i>)	35
22	Spangled emperor (<i>Lethrinus nebulosus</i>)	45
23	Spotted or black jewfish (<i>Protonibae diacanthus</i>)	45
24	Stripey (<i>Lutjanus carponotatus</i>)	25
25	Venus tusk-fish (<i>Choerodon venustus</i>)	30
26	Wahoo (<i>Acanthocybium solandri</i>)	75
27	Yellowtail kingfish (<i>Seriola lalandi</i>)	50
28	Bar-tailed flathead (<i>Platycephalus indicus</i>)	30
29	Burnett salmon (<i>Polydactylus macrochir</i>)	40
30	Cooktown salmon (<i>Eleutheronema tetradactylum</i>)	40
31	Golden lined whiting (<i>Sillago analis</i>)	23
32	Luderick (<i>Girella tricuspidata</i>)	23
33	Pikey bream (<i>Acanthopagrus pacificus</i>)	23
34	Sand flathead (<i>Platycephalus endrachtensis</i>)	30

Item	Column 1 Finfish	Column 2 Minimum length (centimetres)
35	Sand whiting (<i>Sillago ciliata</i>)	23
36	Sea mullet (<i>Mugil cephalus</i>)	30
37	Small spotted grunter bream (<i>Pomadasys agenteus</i>)	30
38	Spotted grunter bream (grunter) (<i>Pomadasys kaakan</i>)	30
39	Tailor (<i>Pomatomus saltatrix</i>)	30
40	Tarwhine (<i>Rhabdosargus sarba</i>)	23
41	Yellow-finned bream (<i>Acanthopagrus australis</i>)	23

10 Prohibition—finfish subject to minimum and maximum length requirements

The taking, processing or carrying of finfish specified in an item in column 1 of the table that is:

- (a) shorter in length than the minimum length specified in column 2 of the table; or
- (b) longer in length than the maximum length specified in column 3 of the table

by a person in the area of the finfish fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

Item	Column 1 Finfish	Column 2 Minimum length (centimetres)	Column 3 Maximum length (centimetres)
1	Barramundi (<i>Lates calcarifer</i>)	58	120
2	Blue-spot trout (<i>Plectropomus laevis</i>)	50	80
3	Estuary cod (<i>Epinephelus</i> sp.)	35	120
4	Leopard or squaretail trout (<i>Plectropomus areolatus</i>)	38	62
5	Red bass (<i>Lutjanus bohar</i>)	45	55

11 Prohibition—finfish subject to maximum length requirements

The taking, processing or carrying of a shark that is longer than 200 centimetres in length in the finfish fishery is prohibited.

Note 1: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

Note 2: The prohibition in section 12 of this instrument also applies to hammerhead shark, grey nurse shark and tiger shark.

12 Prohibition—no take species

The taking, processing or carrying of the following finfish by a person in the finfish fishery is prohibited:

- (a) potato cod (*Epinephelus tukula*); and
- (b) Queensland groper (*Epinephelus lanceolatus*); and
- (c) chinaman fish (*Symphorus nematophorus*); and
- (d) paddletail (*Lutjanus gibbus*); and
- (e) humphead Maori wrasse (*Cheilinus undulatus*); and
- (f) hammerhead shark (*Sphyrna lewini*); and
- (g) grey nurse shark (*Carcharias taurus*); and
- (h) tiger shark (*Galeocerdo cuvier*).

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

13 Prohibition—shark finning

The processing of a shark by removing the fins from the shark and discarding the remainder of the shark into the sea by a person in the finfish fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

14 Prohibition—gear restrictions

The taking, processing or carrying of finfish by a person in the finfish fishery is prohibited by a fishing method other than:

- (a) line fishing methods; or
- (b) a bait net.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

15 Prohibition—permanent closures

Pursuant to paragraph 16(1)(a) of the Act, the taking of finfish is prohibited by line fishing methods in that part of the finfish fishery west of Longitude 142°31'49" E.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

16 Prohibition—seasonal closure

The taking of barramundi by a person in the finfish fishery is prohibited during the period commencing at 12pm AEST on 1 November in any year and ending at 12pm AEST on 1 February in the following year.

Note 1: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

Note 2: This prohibition applies to a person even if the exemption outlined in subsection 8(2) of this instrument applies.

Schedule 1—Repeals

Torres Strait Fisheries Management Instrument No. 8 F2011L01837










1 The whole of the instrument

Repeal the instrument

Attachment B

Proposed new fishing area within the western line finfish closure

TORRES STRAIT

-  Proposed fishing area
-  Western line closure
-  Fisheries jurisdiction line
-  Protected zone
-  PNG village
-  Mainland
-  Sand bank
-  Island
-  Reef



0 20 40
Kilometres

Coordinate System: GCS WGS 1984

Datum: WGS 1984

Units: Degree

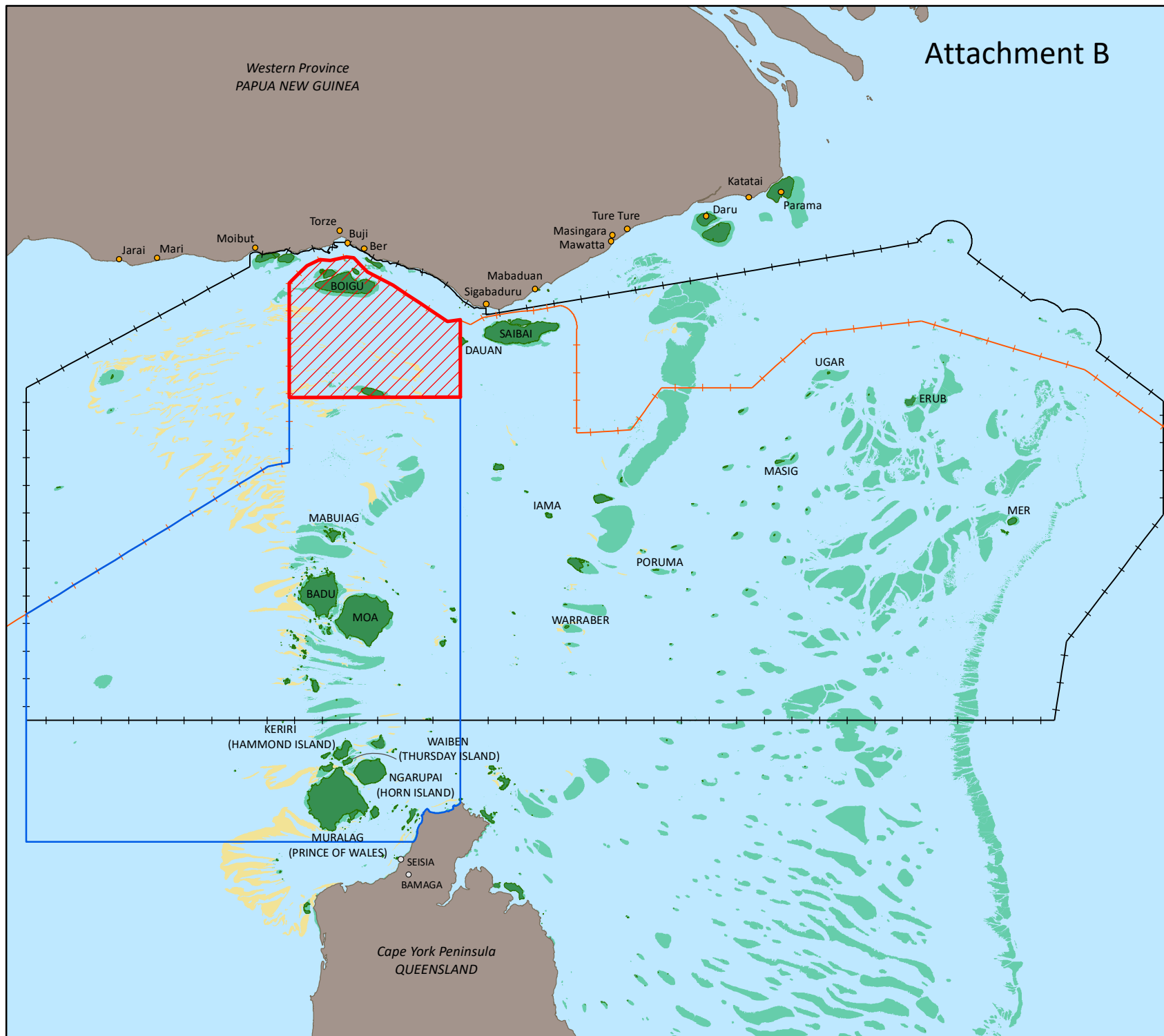
Produced on 16/12/2021

Updated on 12/01/2022

Produced by M.S.

TRC: FI 2021 002










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Attachment C

Proposed change to western line finfish closure

TORRES STRAIT

-  Proposed extent of finfish fishery
-  Proposed line closure area
-  Fisheries jurisdiction line
-  Protected zone
-  PNG village
-  Sand bank
-  Island
-  Reef
-  Mainland



0 20 40
Kilometres

Coordinate System: GCS WGS 1984

Datum: WGS 1984

Units: Degree

Produced on 16/12/2021

Updated on 12/01/2022

Produced by M.S.

TRC: FI 2021 002

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Western Province
PAPUA NEW GUINEA

Torze
Buji
Ber

Jarai
Mari

Moibut

Mabaduan

Sigabaduru

DAUAN

SAIBAI

Katatai

Daru

Parama

Ture Ture

Masingara

Mawatta

UGAR

ERUB

MASIG

IAMA

PORUMA

WARRABER

MABUIAG

BADU

MOA

KERIRI
(HAMMOND ISLAND)

WAIBEN
(THURSDAY ISLAND)

NGARUPAI
(HORN ISLAND)

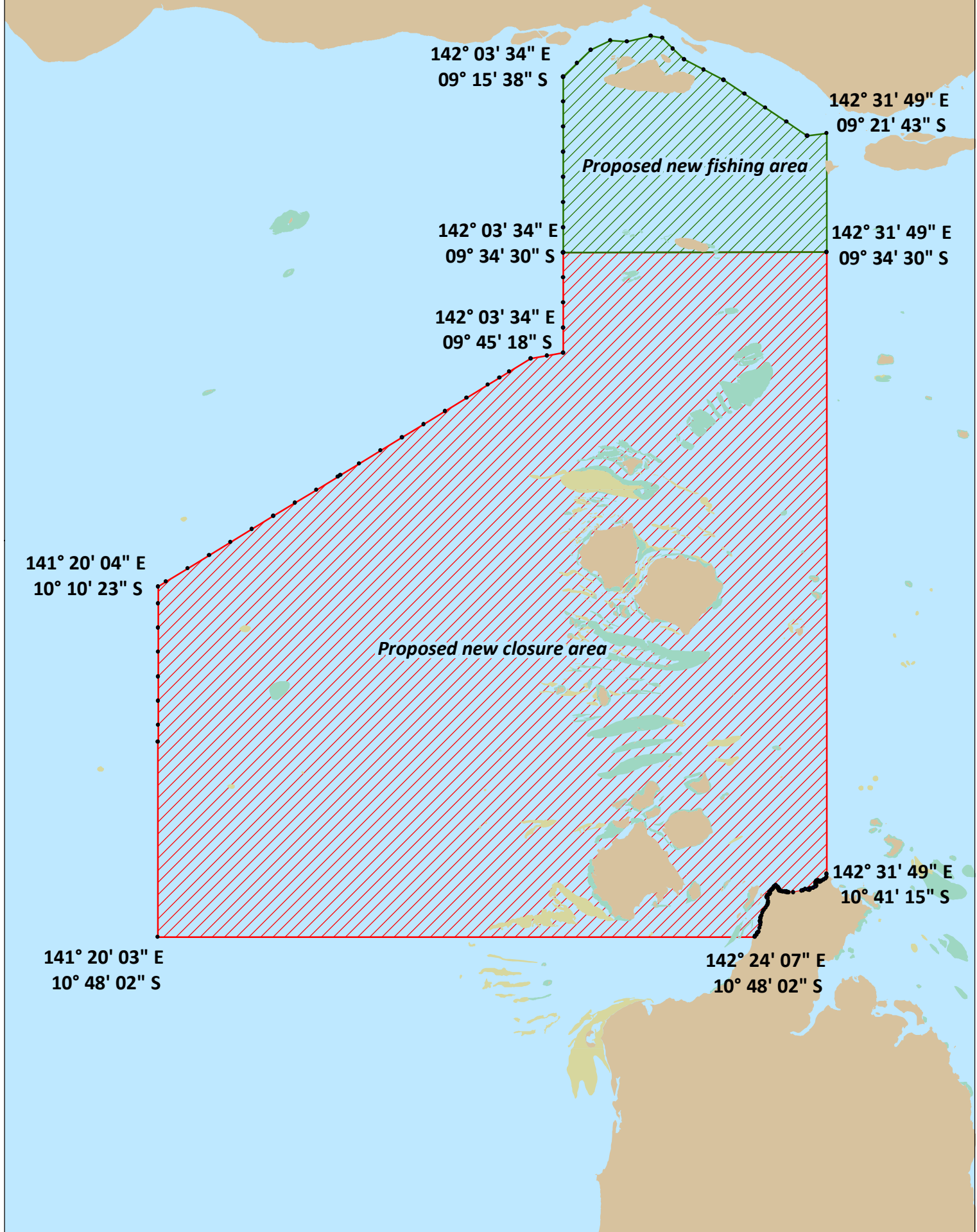
MURALAG
(PRINCE OF WALES)

SEISIA

BAMAGA

Cape York Peninsula
QUEENSLAND

Major Bounding Coordinates of the Western Line Finfish Closure





Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022

The Protected Zone Joint Authority, acting in accordance with the powers conferred on the Authority by paragraph 35(1)(a) of the *Torres Strait Fisheries Act 1984*, makes the following instrument under section 16, and in accordance with section 40 of the *Torres Strait Fisheries Act 1984*.

Dated

Senator the Hon Jonathon Duniam

Assistant Minister for Forestry and Fisheries
Assistant Minister for Industry Development
Chair, Protected Zone Joint Authority

Contents

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4 Schedules.....	1
Schedule 1—Amendments	2
<i>Torres Strait Fisheries (Finfish) Management Instrument 2020</i>	2

1 Name

This instrument is the *Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. <i>The whole of this instrument</i>	<i>1 May 2022</i>	<i>1 May 2022</i>

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 16 of the *Torres Strait Fisheries Act 1984*.

4 Schedules

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—Amendments

Torres Strait Fisheries (Finfish) Management Instrument 2020

1 Section 4 (definition of *licensed person*)

Repeal the definition, substitute:

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.

2 Section 15 (Prohibition – permanent closures)

Repeal the section, substitute:

Pursuant to paragraph 16(1)(a) of the Act, the taking of finfish is prohibited by line fishing methods in the area of the finfish fishery commencing south of Latitude 09°34' 31" S and west of Longitude 142°31'49" E.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

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.

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 accessibility

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>

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 those 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 (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 after registration (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).

DRAFT

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 the day after the Amendment Instrument is registered.

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.