

## Class Notification under the Commonwealth *Native Title Act 1993*

Subject to COVID 19 pandemic measures, endorsement of three Papua New Guinea fishing licences and associated tenders to permit commercial fishing in the Torres Strait Tropical Rock Lobster Fishery

Date of Issue: 11 June 2020

<b>SECTION OF NTA</b>	Section 24HA(2) of the Commonwealth <i>Native Title Act 1993</i>
<b>DEPARTMENT/AGENCY</b>	Australian Fisheries Management Authority (AFMA) on behalf of the Torres Strait Protected Zone Joint Authority (PZJA)
<b>CONTACT NAME</b>	Georgia Langdon
<b>E-MAIL</b>	<a href="mailto:fisheriesTI@afma.gov.au">fisheriesTI@afma.gov.au</a>
<b>TELEPHONE NO.</b>	07 4069 1990
<b>REFERENCE NO.</b>	Subject to COVID-19 pandemic measures, endorsement of Papua New Guinea (PNG) licences and associated tenders to permit commercial fishing in the Torres Strait Tropical Rock Lobster (TRL) Fishery – NT2020-05

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

<b>TYPE OF APPROVAL</b>	Endorsement of PNG licences, making of entries and imposition of conditions under sections 20-22 of the Commonwealth <i>Torres Strait Fisheries Act 1984</i> (the Act)
<b>NUMBER OF APPROVALS</b>	Endorsement of three (3) PNG licences and associated tenders, making of entries and imposition of conditions.
<b>UNDER WHAT ACT</b>	Commonwealth <i>Torres Strait Fisheries Act 1984</i>

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

<b>NATURE OF ACTIVITY</b>	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 each country is entitled to a certain proportion of the TAC in both their own 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.
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	<p>For the 2019-20 TRL fishing season, PNG's catch share in Australian waters for the TRL Fishery is 60 tonnes. On 29 May 2020 PNG nominated three (3) PNG licenced boats with seven (7) associated tenders each to commercially fish this catch share.</p> <p>Subject to adherence with Australia's COVID-19 pandemic measures, the proposed management action would, pursuant to Article 26 of the Torres Strait Treaty and in accordance with:</p> <ul style="list-style-type: none"> <li>• section 20(1) of the Act, endorse three (3) PNG licences so as to authorise the specified boats and associated tenders to take fish in the course of commercial fishing in areas of Australian jurisdiction and the carrying, or processing and carrying, in areas of Australian jurisdiction, fish that have been taken with the use of the licensed boats. This is referred to as a Treaty endorsement under the Act;</li> <li>• section 21(1) of the Act, make an entry in the Treaty endorsement so as to authorise the specified boats and seven (7) associated tenders per boat to commercially fish in the Australian TRL Fishery for the remainder of the 2019-20 fishing season (season ends on 30 September 2020); and,</li> <li>• section 22(1) of the Act, impose conditions to which the Treaty endorsements made under section 20 are to be subject. One specific condition would be to limit the allowable catch of TRL that can be taken by the across all endorsed boats and associated tenders, to a maximum of 60 tonnes, which is equivalent to PNG's allowable catch share in Australian waters.</li> </ul> <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 <b>Attachment B</b>.</p>
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The above activity will be located within:

<b>LOCATION OF ACTIVITY</b>	The PNG licences that are 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: <a href="https://www.legislation.gov.au/Details/F2016C00633">https://www.legislation.gov.au/Details/F2016C00633</a>
<b>MAPS/PLANS</b>	<b>Attachment C</b> shows the area of the TRL Fishery, as described in Item 9, Schedule 2 to the Regulations.
<b>NAME OF REGISTERED NATIVE TITLE CLAIMANT GROUP/S OR NAME OF REGISTERED NATIVE TITLE BODY CORPORATE</b>	Northern Cape York Group #1 Ipima Ikaya Cape York Land Council 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)
<b>NAME OF NATIVE TITLE REPRESENTATIVE BODY</b>	Torres Strait Regional Authority Cape York Land Council

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

<b>DURATION OF APPROVAL</b>	The proposed management action would apply during the 2019-20 fishing season of the TRL Fishery, which ends on 30 September 2020.
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**You are invited to comment upon the class of proposed future acts outlined above within the 28 day response period which ends close of business 9 July 2020. If you would like to extend the response period, please contact AFMA by close of business on 9 July 2020.**

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](mailto:fisheriesTI@afma.gov.au)

## **Background Information**

### **COVID-19 pandemic response measures**

1. AFMA is currently seeking advice from relevant Australian border authorities on how Australia's COVID-19 measures may impact cross-endorsement in this particular fishing season. If permissible any cross-endorsement fishing activities will need to be conducted in line with COVID-19 pandemic risk mitigation requirements of both Australia and PNG.

### **Catch Sharing Arrangements under the Torres Strait Treaty**

2. The jurisdiction and management framework for commercial in the Torres Strait is governed by the provisions of the *Torres Strait Treaty* (the 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.
3. 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 22-23 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.
4. This provides that each country is entitled to a certain proportion of the allowable catch in their own 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.
5. With regards to the commercial catch of TRL, each year Australia and PNG:
  - a. Agree on the global TAC and how it is to be apportioned between Australian and PNG waters.
    - i. It is agreed that 85% of the global TAC is to be taken in Australian waters and 15% of the global TAC is to be taken in PNG waters. This is based on the agreed distribution of TRL in the area of the TSPZ.
  - b. Agree on cross-endorsement allocations and preferential entitlement.
    - i. Under Article 23(4), each country is entitled to fish for 25% of the other country's TAC apportionment in the waters of the other country, unless otherwise agreed.
    - ii. Under Article 25 of the Treaty, where Australia and/or PNG does not itself propose to take all the TAC to which it is entitled, either in its own area of waters or that of the other country, the other country will have preferential entitlement to that share. This must be agreed between Australia and PNG.

6. At their meeting held on 19 November 2019, the PZJA agreed that, subject to further consultation with stakeholders, the preferred arrangement for utilising Australia's cross-endorsement catch entitlement within PNG's waters is to not seek cross-endorsement but rather pursue a preferential entitlement arrangement under Article 25 of the Treaty. This approach was also supported by the Tropical Rock Lobster Working Group at their meeting on 12 December 2019.
7. In effect this means, Australia will seek to take a proportion of PNG's cross-endorsement catch entitlement within Australian waters equivalent to Australia's cross-endorsement catch entitlement in PNG's waters.
8. Conversely, PNG would be entitled to take Australia's cross-endorsement catch entitlement in PNG's waters. Under such an arrangement, Australia's cross-endorsement catch entitlement would be shared across all Australian licence holders in both sectors of the TRL Fishery.
9. The last time PNG boats were cross-endorsed to fish in the Australian TRL Fishery was in 2014. Three boats with associated tenders (7) were endorsed to fish a total catch share of 193 tonnes.

**Catch Sharing Arrangements for the TRL Fishery 2019-20 season**

10. Consistent with advice from the TRL RAG and Working Group, a global TAC of 582.1 tonnes was agreed by the Protected Zone Joint Authority at their meeting on 20 January 2020.
11. As per the terms of the Treaty on catch sharing arrangements for the TRL Fishery for the 2019-20 fishing season, on 28 January 2020, the Australian Fisheries Management Authority and PNG National Fisheries Authority (NFA) initially agreed that:
  - a. As per Article 22(1) of the Treaty, the global TAC for Tropical Rock Lobster (TRL) of 582.1 tonnes is to be apportioned within each jurisdiction equal to 85 per cent (494.785 tonnes) in Australian waters and 15 per cent in PNG waters (87.315 tonnes);
  - b. Australian boats could take in Australian waters, part of the cross-endorsement catch entitlement ordinarily available to PNG boats in Australian waters, equivalent to Australia's cross-endorsement catch entitlement in PNG waters (equal to 21.829 tonnes);
  - c. The remaining part of the PNG's cross-endorsement catch entitlement (101.867 tonnes) remained available for PNG boats to take in Australian waters under cross-endorsement arrangements; and
  - d. In return, AFMA would not seek access to Australia's cross-endorsement catch entitlement in PNG waters and that this can instead be taken by PNG boats in PNG waters.
12. Subsequent to this, final agreement on 5 May 2020 was that:
  - a. PNG would seek to access 60 tonnes of the 101.867 tonnes of TRL available to PNG boats in Australian waters under cross-endorsement arrangements, subject to relevant COVID-19 pandemic measures that would allow cross-endorsement activity; and
  - b. Pursuant to Article 25 of the Treaty, under preferential entitlement, the remaining 41.867 tonnes of PNG's cross-endorsement catch entitlement in Australian waters would be made available for Australian boats.

13. For illustrative purposes, a diagram showing the final agreement for the 2019-20 fishing season is shown at **Attachment D**.
14. On 29 May 2020, AFMA received a written request from the PNG Minister for Fisheries and Marine Resources to the Assistant Minister of Forestry and Fisheries and Chair of the Protected Zone Joint Authority (PZJA) seeking cross-endorsement of three (3) PNG boats (with seven (7) associated tenders per boat) to fish PNG's agreed 60 tonne cross-endorsement catch entitlement of TRL in the Australian jurisdiction of the Torres Strait Protected Zone. This is the subject of this Native Title notification.
15. To give effect to this part of the agreement, it is proposed, in accordance with:
  - a. section 20(1) of the Act, to endorse three PNG licences so as to authorise the specified boat and associated tenders to take fish in the course of commercial fishing in areas of Australian jurisdiction and the carrying, or processing and carrying, in areas of Australian jurisdiction, fish that have been taken with the use of the licensed boat. This is referred to as a Treaty endorsement under the Act;
  - b. section 21(1) of the Act, to 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 2019-20 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.
16. General conditions to which the Treaty endorsement will be subject, may include:
  - a. a limit on the allowable catch of TRL that can be taken across the specified boats and associated tenders, up to a maximum of 60 tonnes, which is equivalent to PNG's TAC share in Australian waters;
  - b. Crew will not be permitted to make landfall or offload product within Australian jurisdiction;
  - c. Treaty endorsement is only valid for 2019-20 fishing season;
  - d. the requirement for any tenders to operate in conjunction with the specified boat;
  - e. the requirements for the marking of the specified boat and associated tenders;
  - f. the requirement to carry a measuring device;
  - g. prohibiting the use, possession or control of hookah gear during specified moon-tide hookah closure periods;
  - h. the requirement to comply with applicable instruments made under section 16 of the Act;
  - i. the requirement to comply with requests to board and directions given during the course of inspections;
  - j. the requirement to complete daily fishing logbooks;
  - k. the 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; and
  - l. the requirement to carry an operational vessel monitoring system.

**Why is this management action being proposed?**

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 (435 tonnes this season), as agreed with PNG. Final agreement on catch sharing arrangements for the TRL Fishery for the 2019-20 fishing season was reached on 5 May 2020.

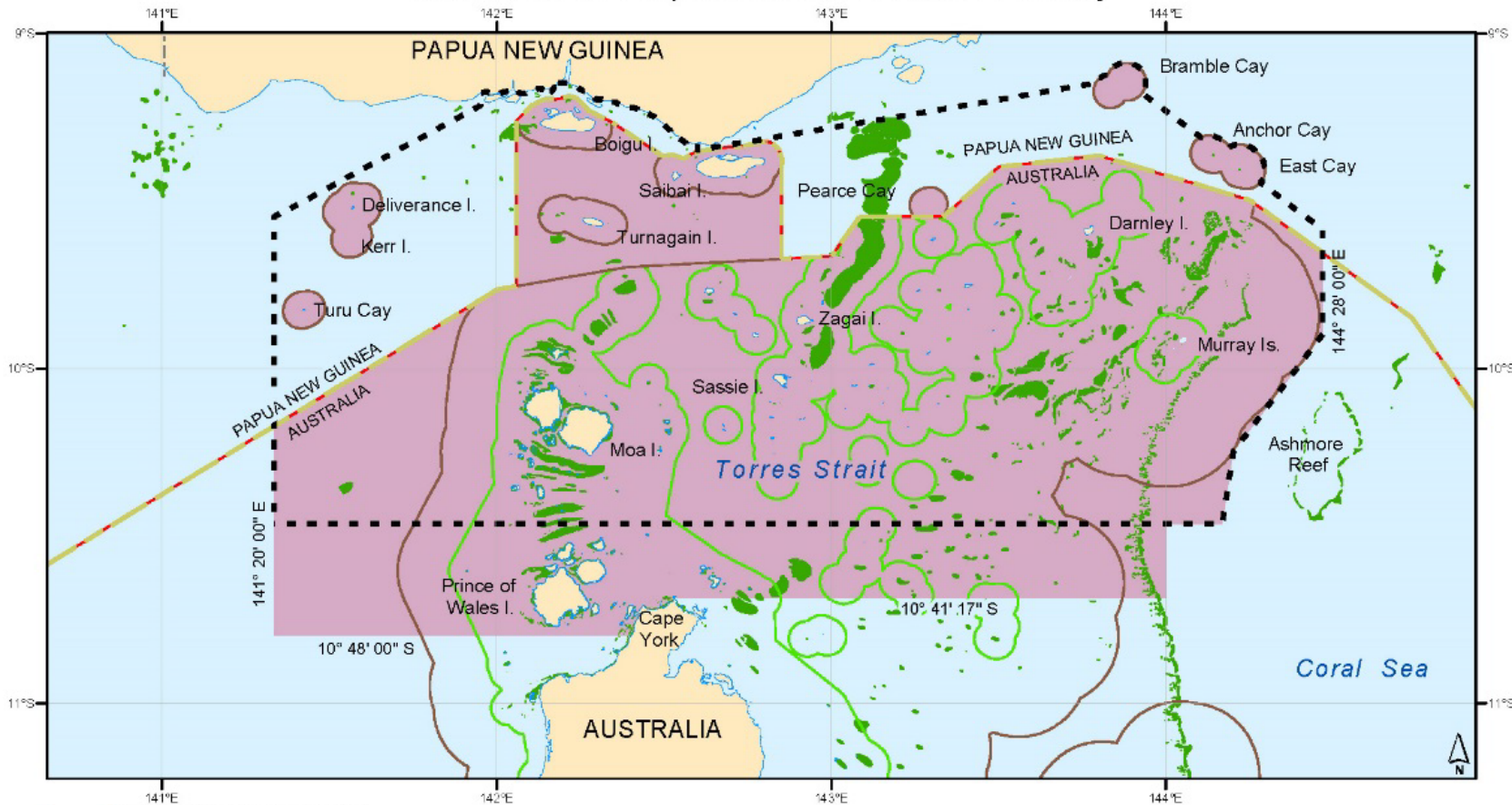
This management action is being proposed to give effect to that agreement as per the terms of the Treaty.

### **How will the proposed management action benefit Traditional inhabitants?**

17. 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.
18. The final agreement between Australia and PNG resulted in an increase in the Australian TAC from 392.9175 tonnes to 434.785 tonnes – an increase of 41.867 tonnes. This additional TAC share was made available to Australian operators on 20 May 2020 and shared between the TIB and TVH sectors of the Australian TRL Fishery in line with the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.
19. The TRL Fishery is the most valuable fishery in the Torres Strait worth approximately \$15 million in 2017-18. 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'



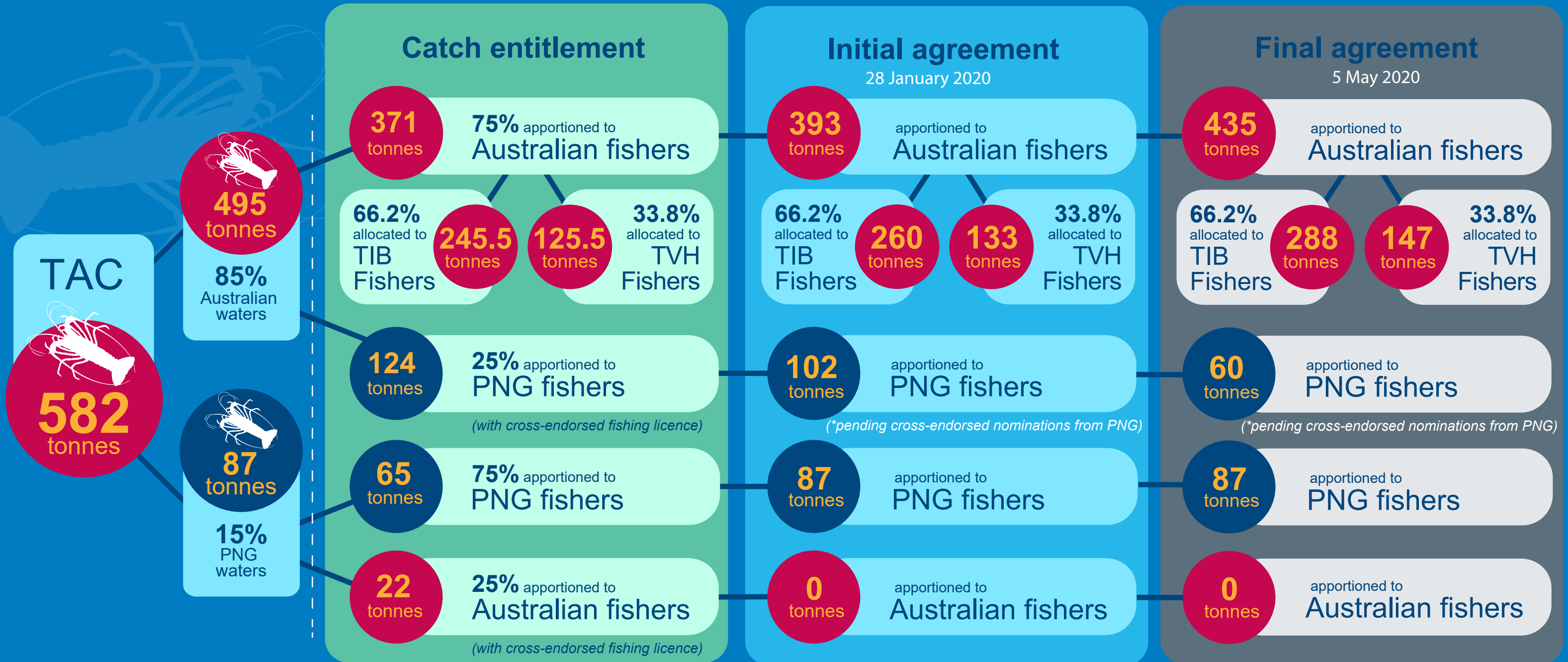
# TORRES STRAIT TRL CATCH SHARING AGREEMENT 2019-20



Australian Government

Australian Fisheries Management Authority

Attachment D



TAC values have been rounded illustrative purposes only.