

TORRES STRAIT PRAWN MANAGEMENT ADVISORY COMMITTEE	Meeting No. 2 19-20 September 2006
OTHER BUSINESS Opportunity to visit the South Australian Spencer Gulf Prawn Trawl Fishery	Agenda Item No. 12.1

THE TSPMAC NOTES

- 1 That the South Australian Director of Fisheries has extended an invitation to:
 - (a) observe pre-season trawl surveys being conducted in the Spencer Gulf Prawn fishery;
 - (b) observe a subsequent meeting between South Australian fisheries management staff and industry members that will analyse the results of the trawl surveys and develop a fishery harvest strategy for their fishery in the 2007 season.

THE TSPMAC RECOMMENDS

- 2 That the TSPEHA should consider the invitation to observe these processes and nominate two industry representatives who would attend this visit on behalf of the Torres Strait Prawn Fishery.

BACKGROUND

The Spencer Gulf Prawn Fishery is currently managed by Dr Cameron Dixon, who has welcomed the proposed visit from Torres Strait Prawn Fishery representatives to increase awareness of the spatial management systems used in the South Australia prawn fishery.

The pre-season surveys are scheduled to occur during the first dark moon period in November 2006, (approximately 11-12 November). The trip will involve observing two nights of trawl survey work, followed by a meeting between management agency staff from the Department of Primary Industries and Resources of South Australia (PIRSA) and industry representatives.

DISCUSSION

If industry members are interested in conducting this visit to observe how the spatial management systems work in the Spencer Gulf Prawn Fishery, it is proposed that two PZJA Agency staff and two industry representatives would travel to South Australia to participate.

Further arrangements, including associated costs, will be organised by DAFF after industry indicates their interest in participating in this educational opportunity.

TORRES STRAIT PRAWN MANAGEMENT ADVISORY COMMITTEE	Meeting No. 2 19-20 September 2006
OTHER BUSINESS Bycatch Reduction Workshop	Agenda Item No. 12.2

THE TSPMAC RECOMMENDS

1. That the PZJA **REQUESTS** that the Australian Maritime College, CSIRO Marine & Atmospheric Research (Cleveland) and AFMA invite and encourage Torres Strait prawn fishers to attend the industry workshop to evaluate the potential of a range of new, innovative options to reduce bycatch scheduled for late November 2006.
2. That the PZJA **REQUESTS** agencies to identify funding opportunities to encourage attendance at the workshop by TSP Industry.

BACKGROUND

In 2006, the Federal Minister for Fisheries, Senator Ian Macdonald announced a one-off structural package for Commonwealth fisheries, including a buy-back of fishing licences, as well as a directive to reduce bycatch by 50% by 2008. To achieve this bycatch target in the NPF, the fishing industry either needs to substantially improve the performance of existing BRD designs or develop new, more efficient designs.

The workshops will be held in Cairns and Darwin, and possibly southern QLD at dates yet to be determined, but likely to be late November 2006 to coincide with the end of the tiger season in the NPF and/or March 2007 to coincide with the beginning of the banana prawn season in the NPF. Members and industry will be advised of the dates and locations of the workshops once they are finalised.

DISCUSSION

A first step towards reaching the bycatch target is for the fishing industry and scientific community to pool their resources and expertise. It was this approach that successfully led to the smooth introduction of effective TED designs into the fishery in the late 1990's. The Australian Maritime College, CSIRO Marine & Atmospheric Research (Cleveland) and AFMA are now planning an industry workshop to bring fishermen and scientists together to evaluate the potential of a range of new, innovative options to reduce bycatch.

A key component of the workshop will be international and Australian specialists presenting information on bycatch reduction measures currently being investigated. These options include the use of low-opening/long-lead-ahead trawls, use of electricity or water turbulence to 'attract' fish towards escape openings, or soft-brush ground gears. At this workshop input by fishermen into a plan for future BRD research will also be sought.

This workshop will then be followed by annual gatherings between fishermen and scientists, to learn of developments in BRD research and discuss future research activity.

Recommendation 11 from the Strategic Assessment report states that the "*PZJA will continue to pursue reduction in the amount of bycatch taken in the TSPF through the*

refinement of bycatch mitigation technology and will investigate methods for increasing the survivability of bycatch species. Any suitable methods identified should be implemented in a timely manner.” Participation in the proposed workshops and implementation of any options identified would help address this recommendation, and by participating in this workshop rather than conducting a fisheries specific workshop or program the cost would be significantly reduced.

Much of the funding for the workshop is from FRDC funding, with the Northern Prawn and East Coast Trawl Fisheries each contributing to the workshop to help provide incentives for their fishers to attend. The TSPMAC may wish to discuss potential funding opportunities to also contribute to the workshop to encourage Torres Strait Prawn Fishers to attend.

TORRES STRAIT PRAWN MANAGEMENT ADVISORY COMMITTEE	Meeting No. 2 19-20 September 2006
PROCESS FOR BRINGING MATTERS BEFORE THE PZJA	Agenda Item No. 12.3

THE TSPMAC RECOMMENDS

12.3 That the PZJA **AGREES**, as a first preference, that matters to be brought before the PZJA referred through the appropriate PZJA consultative mechanism, noting that the PZJA consultative mechanisms, including specific working groups, provide a robust and transparent avenue for input into PZJA decisions and communication with PZJA Members.

BACKGROUND

Over the course of 2006, stakeholder groups have made a number of direct approaches to PZJA members with a view to revisiting or amending decisions of the PZJA after they have been made. These approaches are generally related to PZJA 18 Resource allocation decisions regarding a 50:50 share of the commercial resource in the finfish and tropical rock lobster (TRL) fisheries and proposed 10 nautical mile “area closures” around four islands affecting the finfish fishery.

DISCUSSION

PZJA’s consultative mechanisms are designed to seek the views of all sectors in the Torres Strait Protected Zone fisheries.

The practice of approaching Members of the PZJA (particularly the Chair) after decisions have been made has only served to delay implementation of decisions rather than changed the decisions themselves. These delays have caused uncertainty to operators in both commercial fishing sectors across all fisheries.

It is important for PZJA stakeholders to have the capacity to communicate with PZJA Members. It is anticipated that there will be continued direct approaches to PZJA members.

Nonetheless, the PZJA has an established and robust consultative framework so that stakeholders can put their views on the table in a structured and transparent manner.

In addition, while direct approaches to the PZJA Chair have generally copied other PZJA Members, the task of coordinating a response on matters out of session should not be underestimated.

Experience has shown a preference for the Chair to refer matters back into the PZJA consultative structure. The recommendations in this paper would formalise this practice as a preferred approach of the TSPMAC.

TORRES STRAIT PRAWN MANAGEMENT ADVISORY COMMITTEE	Meeting No. 2 19-20 September 2006
TORRES STRAIT FISHERIES ACT 1984 – LEGISLATIVE AMENDMENTS	Agenda Item No. 12.4

THE TSPMAC RECOMMENDS

12 That the PZJA **NOTES** that

- (a) the TSPMAC has considered materials prepared by the Department of Agriculture, Fisheries and Forestry (the Department) to facilitate consultation on proposed amendments to the *Torres Strait Fisheries Act 1984*;
- (b) the Department has commenced consultation with Torres Strait prawn fishers on proposed amendments and has informed the TSPMAC on consultation mechanisms and proposed timetable.

BACKGROUND

PZJA 19.3 agreed that amendments to the *Torres Strait Fisheries Act 1984* (the Act) were required in order to implement new management arrangements in the Torres Strait fisheries and requested the Department prepare drafting instructions for the Australian Government Office of Parliamentary Counsel so that a *Torres Strait Fisheries Amendment Bill (2006)* can be drafted.

Consistent with the PZJA's request, and based on consultation with PZJA agencies, the Department developed drafting instructions based on a set of PZJA agreed principles (**Attachment A**) to

- (a) ensure that Torres Strait fisheries can be managed sustainably under appropriate output controls;
- (b) improve operational and administrative efficiency of Torres Strait fishery management arrangements; and
- (c) seek consistency with the *Fisheries Management Act 1991* (Cth) and the *Fisheries Act 1994* (Qld), except as required by the Torres Strait Treaty or established operational and policy practices.

A detailed description of proposed amendments will be tabled at the TSPMAC by the DAFF observer. This document will be provided to representative groups and relevant native title bodies (a requirement under the *Native Title Act 1993*).

To facilitate awareness of proposed amendments, the Department has prepared the publication *Torres Strait Fisheries Act 1984: Consultation on proposed amendments* (**Attachment B**) has been prepared by the Department. This document will be distributed to Torres Strait prawn entitlement holders by mail after TSPMAC 2. An outline of the consultation process is provided on page 5.

The *Torres Strait Fisheries (Amendment) Bill 2006* has been assigned an "A" status in the Spring 2006 sitting period by the Parliamentary Business Committee. This means the a Bill should be drafted and introduced, but not necessarily passed, in the Spring 2006 sitting period (which ends in December 2006). The exact timetable for drafting is dependent on the legislative priorities for the Government.

DISCUSSION

Proposed changes to the Act have been developed from a variety of sources including TSFMAC deliberations and consultation with PZJA agencies.

Comments provided by stakeholders will be taken into account when legislative drafting commences. When an amendment bill is prepared, the Department will make it available to PZJA stakeholders for further comment.

The PZJA will consider the final form of an Amendment Bill before it is passed by the Australian Parliament. In doing so it will have regard to the views expressed by Torres Strait fishers (traditional, community and non-community) and others affected by proposed changes.

The consultation process is outlined on Page 5 of Attachment B.

Legislative amendments will be on the PZJA 20 agenda.

Item 12, Attachment A (TSPMAC)

Drafting Principles for Amendments to the Torres Strait Fisheries Act 1984

Approved at PZJA 19

Part I - Preliminary

Amendments to the *Torres Strait Fisheries Act 1984* should where possible, be consistent with the definitions contained in the *Fisheries Management Act 1991* (FMA) except as required by the Treaty and operational and policy practices. Definitions to support the management plans and enforcement will be introduced.

Part II – Administration

The Objectives of the Act will be amended, having regard to established operational and policy practices, the sustainability of the Torres Strait Fisheries, the *Report of the Committee of Officials, National Competition Policy and Legislative Review of the Act and Related Acts* (1999) and will establish a hierarchy of objectives consistent with the Treaty.

Part III – Regulation of Fishing

A formal allocation policy accounting for all sources of mortality will be established. Amendments will provide flexibility for the possible inclusion of management plans for traditional fishing, having regard to native title mechanisms (including Indigenous Land Use Agreements) and potential developments. Requirements in respect of management plans for different sectors will accommodate the movement of management arrangements to output controls. Mechanisms such as annual catch or effort management tools will be introduced to facilitate trading within and between various sectors.

Part IV – Licences, endorsements and entries

Where possible, amendments will provide consistency with the licensing arrangements contained in the FMA except as required by the Treaty and operational and policy practices. Amendments will include

- a mechanism for entities to hold entitlement without a boat licence;
- improved procedures for monitoring the activity of PNG licence holders and incorporating information in managing fisheries;
- improved administrative procedures (including procedures to respond to issuance of incorrect licences, capacity to issue waivers and arrangements for renewals);
- a revised system of permits for specific purposes (including scientific, developmental fisheries and port permits); and
- mechanisms to regulate fish receivers

Part V – Arrangements with Queensland

This part of the Act will be renamed: “*Protected Zone Joint Authority*” and amendments will include revised provisions to improve the efficiency and administration of the PZJA.

Part VI - Enforcement

To clarify enforcement provisions amendments will mirror enforcement arrangements in the FMA except as required by the Torres Strait Treaty and operational and policy practices. These include:

- matters of procedure (including issuance of identity cards)
- the provision of penalty infringement notices and the introduction of penalty units in place of fixed fines
- expanded offences to support the introduction of output controls
- clarification of sanctions (including the introduction of administrative penalties for minor breaches of management plans)
- disclosure provisions (for enforcement purposes) including provision of information to Customs;
- the capacity to apply a demerit point system;
- Officer liability.

Part VII – Miscellaneous

A system of review and appeals of administrative decisions made under the Act will be included. Proposals will take account of the experience of AFMA and the Department with the Administrative Appeals Tribunal and the Statutory Fishing Rights Allocation Review Panel.

Amendments to the Fisheries Administration Act 1991

Amendments will be introduced to clarify AFMA's role and ability to accept delegations from the PZJA.

Amendments to the Fisheries Levy Act 1984

Amendments will be introduced to permit cost recovery under new arrangements.



Queensland
Government



TORRES STRAIT
PZJA
PROTECTED ZONE
JOINT AUTHORITY

**INFORMATION FOR COMMUNITY, COMMERCIAL,
TRADITIONAL FISHERS AND OTHERS AFFECTED BY
PROPOSED AMENDMENTS TO THE *TORRES STRAIT
FISHERIES ACT 1984***

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Executive Summary

This document outlines proposed changes to the *Torres Strait Fisheries Act 1984* (the Act) and provides information about why those changes are needed.

Fisheries management in the Torres Strait is complex. Any changes to the Act need to take into account State and Commonwealth legislation, policies and practices. In addition, changes need to be consistent with the Torres Strait Treaty with Papua New Guinea (the Treaty). With these things in mind, proposed changes are designed to:

- better position Australia to meet its rights and obligations under the Treaty;
- better enable the fisheries to be managed according to the resource allocation decisions made by the Protected Zone Joint Authority (PZJA) in April 2005; and
- allow the PZJA to manage the fisheries sustainably.

These objectives will be achieved by:

- more effective regulation of the fisheries;
- emphasising output measures to manage fishing; and
- better catch monitoring and recording to determine the health of fish stocks and sustainable harvest levels.

The Australian Government Department of Agriculture, Fisheries and Forestry, in consultation with PZJA agencies – the Australian Fisheries Management Authority, the Queensland Department of Primary Industries and Fisheries and the Torres Strait Regional Authority – has developed proposed amendments to the Act.

Now it is time for individuals and businesses that live and/or fish in the Torres Strait Fisheries to comment on the proposed changes.

A summary of proposed changes is outlined on pages 6 to 12. This summary is provided so that individuals can make further inquiries on matters of interest to them. Industry organisations, Community Fisher representatives and native title prescribed bodies corporate have been provided with a more detailed description of proposed amendments. This detailed description is available on-line at www.pzja.gov.au (click on the legislation tab).

For further information on the process of consultation, see page 4 of this document.

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Glossary of terms

Abbreviated term	In full	Occurs page
the Act.....	<i>Torres Strait Fisheries Act 1984</i>	2
PZJA	Protected Zone Joint Authority	2
the Treaty	Torres Strait Treaty (between Australia and PNG)	2
the Bill.....	<i>Torres Strait Fisheries (Amendment) Bill 2006</i>	5
TSPZ.....	Torres Strait Protected Zone	6
PNG.....	Papua New Guinea	6
TAC.....	Total Allowable Catch	7
AFMA.....	Australian Fisheries Management Authority	7
QDPI&F..	Queensland Department of Primary Industries and Fisheries	10
TIB	Traditional Inhabitant Boat	17
TVH	Transferable Vessel Holder	17

On-line Resources

www.pzja.gov.au - PZJA – Click on the Legislation Tab for links to the:

- *Torres Strait Fisheries Act 1984* (which includes the Torres Strait Treaty and Schedule 1)
- Department of Agriculture, Fisheries and Forestry
- Torres Strait Regional Authority
- Queensland Department of Primary Industries and Fisheries
- Maps of the Torres Strait fisheries
- Details of proposed amendments to the *Torres Strait Fisheries Act 1984*
- Records of PZJA decisions

www.qsia.com.au – Queensland Seafood Industry Council

- for information about the Queensland Seafood Industry

www.nntt.gov.au – National Native Title Tribunal

- for information about native title interests in the Torres Strait

www.opc.gov.au – Office of Parliamentary Counsel

- for information about the legislative process

Consultation process

There are many ways for Torres Strait stakeholders and interested parties to have a say about proposed changes to the Act. The Act will change when Parliament agrees to pass the *Torres Strait Fisheries (Amendment) Bill 2006* (the Bill). The final wording of the Bill should be ready later in 2006 (depending on other Government business in the Parliament). When a draft Bill is ready, it will be posted at www.pzja.gov.au.

The Bill may be introduced to Parliament in 2006 but it is not expected to be voted on until 2007.

The first important date to remember is that on **October 25 & 26** – The PZJA will consider comments made by the Torres Strait Fisheries Management Advisory Committee on proposed amendments to the Act as outlined.

Further Information

For more detail the proposed changes please visit the PZJA website: www.pzja.gov.au and click on the legislation tab. If you don't have internet access, you can contact one of the contacts listed on page 1 by telephone or mail and request further information.

How to contribute a point of view?

You can send an email to torres.legislation@daff.gov.au. Alternatively, you can talk to a representative on one of the following groups (all of these groups have been provided with detailed information about proposed changes to the Act).

- Community Fishers Group
- Torres Strait Prawn Management Advisory Committee
- Torres Strait Fisheries Management Advisory Committee
- Queensland Seafood Industry Association
- Queensland Tropical Rock Lobster Association
- Torres Strait Prawn Entitlement Holders Association
- Native title representative body

To receive updates about the status of the Bill, send an email to torres.legislation@daff.gov.au or write to:

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Summary of proposed amendments:

On the pages that follow is a brief description of the proposed amendments to the Act. The headings relate to the relevant section of the Act that the following text describes. For example, the heading **Part I – Preliminary** below relates to the section of the Act called **Part I – Preliminary** and is on page 1 of the *Torres Strait Fisheries Act 1984*, (compilation prepared on 30 November 2005). A PDF version of the Act is at www.pzja.gov.au under the Legislation tab.

If you require further information about any of the proposed amendments, the Department recommends you obtain a copy of the document “Proposed Amendments to the *Torres Strait Fisheries Act 1984*” from one of the sources listed at page 5.

Part I Preliminary

This part of the Act sets out how the act should be interpreted by fishers, fisheries management agencies, enforcement officials, government officers and the legal system. It is mostly of definitions or “interpretations”. Some changes to definitions are proposed to reflect current practices or to provide clarity.

Definition – Australian Boat

A small number of boats operate in the TSPZ that could meet the definition of an Australian boat *and* a Papua New Guinea (PNG) boat. This can create a problem in that boats that could be better described as PNG boats may transit the Australian jurisdiction of the TSPZ without seeking approval to enter an Australian port or Australian jurisdiction. It is proposed to change the Australian boat definition to provide clarity for enforcement officers.

Definition - Fishing

The Act currently defines fishing as “the taking of fish and includes the processing of fish that have been taken or the carrying of fish that have been taken”. This means defendants could exploit loopholes if caught engaging in unlicensed or prohibited activity before actually taking fish (for example, the use of aggregating devices in searching for fish).

Proposed changes would make the definition of fishing consistent with the Fisheries Management Act 1991 whilst remaining consistent with the Treaty. Amendments should also take into account a range of fishing activities that may be conducted by hand (for example, lobster, beche-de-mer and crab fishing).

Definition – Community fishing

Decisions of the PZJA have expanded eligibility for Community Fishing licenses to ensure consistency with the Treaty. It is proposed that the definition of Community fishing is changed to reflect these decisions and give the PZJA the power to revisit the issue “from time to time”.

Box 1: Fisheries management

Most fisheries are regulated to achieve policy objectives. Such regulations can include gear restrictions, closed areas or seasons, catch quotas or a combination of these. Fisheries management has generally restricted access to fisheries and limited fishing effort, with the aim of stabilising or repopulating fish stocks. In many cases, these management controls have not been able to reverse the decline in fish stocks.

Developments in fisheries management techniques has led to contemporary practices aimed at conserving fish stocks, increasing fishery returns and improving operational efficiency. Long-term management options comprise a combination of input controls and output controls. Input controls focus on controlling the effort put into fishing while output controls concentrate on the quantity of fish taken.

Input controls

Input controls include area closures, seasonal closures, gear restrictions and controls on vessel size. Input controls are useful to reduce fishing effort and protect stock in fisheries. They are particularly useful when there is poor knowledge of the fish stock, high seasonal variability or where other controls are inappropriate or too expensive. These methods have proven alone to be unsuccessful management techniques as fishermen have substituted uncontrolled inputs for controlled inputs. For example, when a restriction on boat length is applied, fishers may employ a wider boat without breaching the regulation, and the harvest of fish continues to increase. This practice is known as effort creep.

Output controls

Output controls involve the setting of a total allowable catch (TAC) for a fish stock. An annual TAC for a fishery is divided up amongst fishers in accordance with the proportion of the catch each fisher is entitled to. These entitlements can be traded in the form of individual transferable quotas. The use of TAC limits may, over time result in a reduction in size of the fishing fleet as less efficient fishers lease or sell their quota to others in the fishery.

Output controls can be more expensive to manage but have proven a valuable tool for sustainable resource management.

Definition – Officers

The Act provides for specific persons to engage in surveillance and enforcement activities, including government employees, the Police and Australian Defence Force. Proposed changes will give the Australian Fisheries Management Authority (AFMA) powers to appoint officers and issue identity cards. Australian Customs officers will become prescribed persons and will not need to carry an AFMA issued identity card.

Part II Administration

This part of the Act outlines administrative arrangements in Torres Strait fisheries, particularly the way in which the Minister performs his/her duties. Amendments are proposed to improve the efficiency of the decision making process.

Objectives of the Act

Different legal opinions have been provided to the PZJA suggesting ways of interpreting Australia's rights and obligations under the Treaty. These differences of opinion have highlighted a need to better articulate the objectives of the Act. A hierarchy of objectives consistent with the Treaty is proposed.

Delegations

Better ways to delegate powers are needed. Queensland, for example, administers licensing and is involved in enforcement issues. Queensland, however, cannot suspend licenses because this may only be done by the Chairperson of AFMA. Amendments should provide the PZJA with the power to delegate all powers under the Act (with the exception of the power of delegation itself).

Part III Regulation of fishing

This part of the Act refers to the management and regulation of fishing practices in Torres Strait fisheries. The Act allows for a range of (primarily) input controls (area closures, gear restrictions etc) to be applied. Changes are proposed in this part of the Act to provide for a more comprehensive and robust fisheries management system. Amendments are proposed to ensure fisheries Management Plans can be developed.

Allocation policy and management plans

The Act allows for the PZJA or the Minister to establish management plans against input controls in the fisheries. Input controls regulate the effort in the fishery (the size of a vessel or the number of days allocated to a fishing licence). They can also establish restrictions on fishing (ie, area closures and gear restrictions). The proposed amendments would provide for output controls in addition to input controls. To implement new management arrangements, the PZJA should be empowered to establish a TAC, total allowable effort or a combination of both for each fishery.

Management of traditional fishing

According to the Treaty, the principle purpose of establishing the Protected Zone in the Torres Strait is to "acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing and free movement".

A Traditional Fishing Management Plan would help Australia meet its obligations under the Treaty. The Treaty requires that if the sustainability of a fishery is in question, conservation measures can be applied so long as the "restrictive effects of that measure on traditional fishing are minimised".

Management of Community, commercial and Treaty endorsement fishing

Sustainable harvest (and all forms of harvest) and flexible trading systems should be considered when developing commercial fisheries management plans. Changes should allow for an annual catch or effort entitlement as a proportion of the total commercial share. This would create a separately tradeable unit issued on an annual basis and provide a basis for temporary transfer of annual entitlements between the community, commercial and treaty endorsed sectors.

Logbooks

Not all licensees are required to keep accurate data on harvest. This diminishes the value of the available harvest data in the fisheries. Provision for the PZJA to require licence holders to keep logbooks should be made. This could manifest in the current voluntary docket book system (used by community fishers) becoming a requirement under management plans or as a condition of a licence.

Establishment of a Register

Communicating with licensees is essential for an effective output control system. Proposed amendments would enable the establishment of a Register, which would require licence holders to notify the register when a change of details occurs.

Box 2: Why manage Traditional Fishing?

One objective of a Traditional Fishing Management Plan would be to develop community based monitoring systems that ensure the estimate of traditional take is consistent with the actual take. Where a commercial fishery management plan underestimates traditional take, it should be amended to ensure the PZJA is managing the fisheries in accordance with the Treaty.

A Traditional Fishing Management Plan would have regard to the *Native Title Act 1993* and could be underpinned by an Indigenous Land Use Agreement.

Better understanding of each sector's take will mean that better decisions can be made to benefit each sector, to protect traditional fishing and improve the sustainability and value of the fisheries. This is why it is proposed that the PZJA could call for a plan of management for traditional fishing activities.

What does this mean?

It is likely that a plan of management for traditional fishing would require extensive consultation with traditional fishers. In the first instance, it is likely that such a plan would include community based monitoring and management systems to:

- monitor and report take;
- implement sustainability measures (such as the bag limits already in place for traditional harvest of Tropical Rock Lobster); and
- apply gear and area restrictions (such as those in place in the Dugong fishery).

Part IV Licences, endorsements and entries

This part of the Act sets the framework for the issuance of licenses, endorsements and permits for the fisheries. Proposed changes to the Act should provide clarity regarding licensing policy and give powers to the PZJA to regulate the licensing process. A new section of the Act is also proposed to regulate fish receivers in the Torres Strait fisheries consistent with established Commonwealth and Queensland practices.

Licensing policy

The Act allows for a licence to be issued against a boat. This practice is not applicable in all fisheries (ie, hand collectables species) and also presents administrative difficulties when circumstances render a boat unusable, such as a boat sinking. Issuance of licences against boats further doesn't provide for smaller, primarily Traditional Inhabitant hand collectable fisheries (ie, Trochus and Pearl Shell).

Proposed amendments would allow licences to be issued to individuals, as well as against a boat.

Treaty endorsement

The Act refers to boats under PNG flag and boats licensed by the PNG Government. Better methods to monitor and regulate boats under PNG flag are essential to ensure all commercial fishing activities are consistent with new management plans and the Treaty. Proposed changes would allow for boats under PNG flag to state their intention when entering the TSPZ and declare their catch when leaving.

Issuance of incorrect licences

Queensland Department of Primary Industries & Fisheries (QDPI&F) issues licences upon the processing of payment. Sometimes cheques and payments bounce. The changes would allow for authorities to cancel a licence in these and similar situations.

Renewal of authority

The Act says licence renewal should occur approximately in the eleventh month of the current licence. QDPI&F applies (by policy decision) a renewal timeframe on licences of three months after expiry. Changes would confirm QDPI&F practice.

Permits

The capacity for the PZJA to issue permits could streamline the administration of the fisheries. These include permits for developmental or exploratory and restocking purposes. Proposed changes would allow for the issuance of permits for a range of purposes, consistent with the objectives of the Act and the Treaty.

Regulation of fish receivers

Queensland and Commonwealth fisheries legislation both allow for the regulation of fish receivers. A new section of the Act is proposed to make the Torres Strait fisheries consistent with Queensland and Commonwealth fisheries legislation. Changes should allow the PZJA the power to regulate fish receivers to ensure the PZJA has a better knowledge of the actual catch taken in the fisheries, which allows better decisions leading to more sustainable fisheries.

Part V Arrangements with Queensland

Minor amendments to this part of the Act are proposed, one of which is to change to the name of this section to the PZJA.

Part VI Enforcement

This part of the Act deals with enforcing fisheries rules and regulations in Torres Strait fisheries. Proposed changes to this part of the Act would allow the PZJA to implement a range of measures, including infringement notice and demerit point systems.

Clarification of sanctions

While the Act allows licences to be suspended, other sanctions such as putting conditions on licences, cancelling licences or disqualifying licences are not adequately allowed for. These are tools that can be used to help improve the sustainability of the fishing resource. Changes would allow for penalties such as licence cancellation or disqualification if need be.

Provision for infringement notices and demerit point system

The Act requires prosecution of offences in the courts. Changes will provide enforcement officers with an option to issuing on-the-spot fines as an additional deterrent to breaches of licence conditions or Management Plans. The court system would still be available for the prosecution of serious offences and a mechanism to appeal penalties would be in place. Proposed changes would also allow a system of demerit points. Where offenders accrue a threshold level of points, a person, company or its directors could be liable to disqualification from holding fishing entitlements.

Box 3: Why regulate fish receivers?

It is important for fisheries management agencies to have a clear understanding of fish delivered to fish receivers. This will ensure that data collected by fisheries management agencies is robust.

Queensland regulates fish buyers in the Torres Strait under its own legislation and product caught in Queensland waters may only be received by a holder of a Queensland buyer's licence. The TSPZ fisheries are Commonwealth fisheries according to the Act, the Queensland Torres Strait Fisheries Act 1984 and an Offshore Constitutional Settlement. AFMA also seeks the capacity to monitor the harvest up until the first point of receipt outside of the TSPZ and outside but near area.

Proposed changes would provide the PZJA with the power to apply a full regulatory scheme on fish receivers and processors. Whether fish receivers are regulated under the Queensland or Commonwealth schemes would be a decision of the PZJA.

What does this mean?

Processors, carriers, and fish receivers (regardless of whether located in or outside of TSPZ) would provide data on all fish delivered from the TSPZ and outside but near areas.

Requiring a vessel to stop

The Act allows officers to stop a vessel to conduct a search. However, the procedures for doing so (eg, how to direct a vessel to stop) are not well described. Amendments are proposed that better describe these procedures.

Warrants

An officer can obtain a warrant from a Justice of the Peace to search a premises or vehicle on land, if it is necessary to investigate a suspected offence. Amendments are proposed to better outline the procedures for entering premises or searching a vehicle when a warrant cannot be obtained within a specified period of time.

Identity cards

The Managing Director of the AFMA currently issues identity cards to officers for surveillance and enforcement purposes. Proposed changes would require that all officers carry cards issued by AFMA to conduct activity in Torres Strait Fisheries, unless they are prescribed officers (i.e. Australian Customs, Australian Defence Force and Australian Federal Police).

Provision of Information

There is some doubt among PZJA agencies about information sharing for enforcement purposes. Changes would allow for information sharing between PZJA agencies for enforcement and surveillance purposes, consistent with the *Privacy Act 1988*.

Other relevant legislation

Fisheries Administration Act 1991

A consequential amendment to the *Fisheries Administration Act 1991* should be made to clarify AFMA's ability to accept delegations from the PZJA.

Fisheries Levy Act 1984

Amendments are proposed to permit cost recovery under new management arrangements in the Torres Strait Fisheries

Background

Torres Strait Treaty with Papua New Guinea

The Torres Strait Treaty (the Treaty) between Australia and PNG was signed in December 1978 and ratified by Australia on 15 February 1985. The Treaty

- establishes maritime boundaries and sovereignty arrangements between the two countries
- is concerned with protecting the marine environment
- aims to ensure the most appropriate use of commercial resources in the region and
- sets out arrangements for health and quarantine in the Torres Strait.

The Treaty also establishes the Torres Strait Protected Zone (TSPZ), in which each country exercises certain rights over swimming fish and sedentary species within the TSPZ and the areas near the TSPZ. The principle purpose of establishing the TSPZ is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants of the area including their traditional fishing and their traditional right of free movement.

The Treaty says Australia and PNG should cooperate in conserving and managing commercial fisheries in the TSPZ (Figure 1). Cooperation is important to Australia and regular discussions with PNG are held. The most tangible aspect of this cooperation is the catch-sharing provisions (set out under Article 23 of the Treaty). Under the provisions, Australia and PNG share the catch of selected Torres Strait fisheries and develop conservation and management strategies (under Article 22).

The Torres Strait Protected Zone

There are two main boundaries governed by the Torres Strait Treaty:

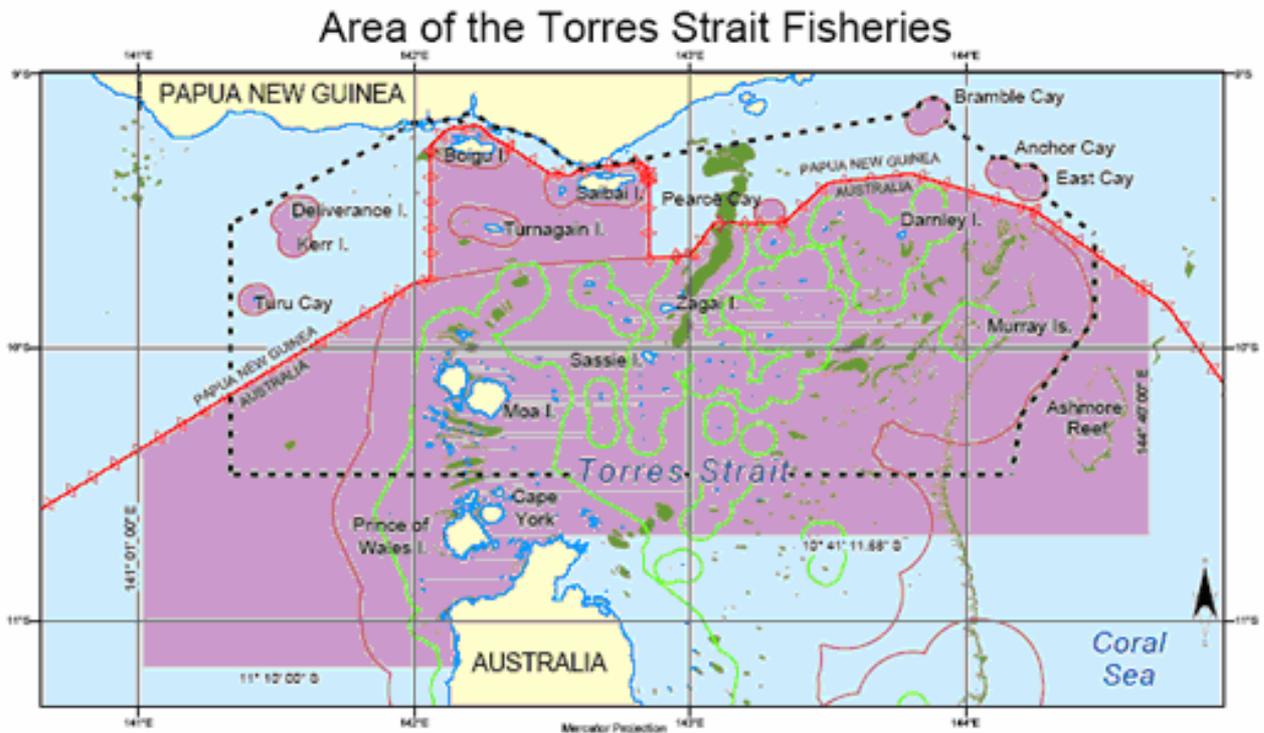
Seabed Jurisdiction Line

- Australia has rights to all things on or below the seabed south of the line and PNG has the same rights north of the line.

Fisheries Jurisdiction Line

- Australia has rights over swimming fish south of this line and PNG has the same rights north of the line.
- The two countries have agreed under the Treaty to share the fisheries resource.

Figure 1 – The Torres Strait Protected Zone is the area inside the dotted black line. The shaded purple area represents the Australian fisheries jurisdiction of the Protected Zone and the Outside but near area, established by the Treaty, administered under the Act. The red line represents the “fisheries jurisdiction line”



Legislation

The Treaty was ratified by the Australian Government when the *Torres Strait Fisheries Act 1984* came into effect. The Act sets out arrangements for the Torres Strait fisheries and regulates all commercial fishing in the Australian jurisdiction of the TSPZ.

Arrangements with Queensland are set out in Part V of the Act, the *Queensland Torres Strait Fisheries Act 1984*, and an Offshore Constitutional Settlement: *Arrangements between the Commonwealth and the State of Queensland under Section 31 of the Torres Strait Fisheries Act 1984* (Gazetted 19 March 1999).

The Protected Zone Joint Authority (PZJA)

The PZJA is established under Section 30 of the Act which defines the membership of the PZJA as the Commonwealth and Queensland ministers and the Chairperson of the Torres Strait Regional Authority. The PZJA’s job is to keep “constantly under consideration” the condition of the fishery, and formulate policies and plans for the good management of the fishery.

PZJA 18 Resource Allocation Decisions (new management arrangements)

In April 2005, the PZJA agreed to significant changes in the management of the Australian share of the commercial fisheries in the TSPZ (including the outside but near area). The full text of the PZJA resource allocation decisions can be found at www.pzja.gov.au.

Following provision for PNG catch sharing arrangements, the PZJA decided that in the Reef Line and Spanish Mackerel fisheries (known as Finfish Fishery) and the Tropical Rock Lobster fishery, a transition towards greater traditional inhabitant commercial allocation be made. This means achieving a 50:50 resource allocation share between traditional inhabitant commercial fishers and non-islander commercial fishers, acknowledging a longer term goal for islanders of achieving a 70:30 allocation in favour of traditional inhabitants. The PZJA will fund the achievement of the 50:50 resource allocation share in these two fisheries and agreed that a move to 70:30 should be self funded under open market arrangements.

To make these changes, the PZJA decided that changes to the Act were needed so that Management Plans could be developed which managed the fisheries according to the resource allocation decisions. These resource allocation decisions and implementation of management plans are referred to as “new management arrangements”.

Torres Strait Fisheries (Amendment) Bill 2006

In April 2006, the PZJA asked the Department of Agriculture, Fisheries and Forestry to prepare drafting instructions so that legislation could be drafted to amend the Act. A *Torres Strait Fisheries (Amendment) Bill 2006* will be drafted by the Australian Government Office of Parliamentary Counsel, which drafts all Government sponsored legislation (www.opc.gov.au). Proposed objectives for the *Torres Strait Fisheries (Amendment) Bill 2006* are:

Torres Strait Fisheries Act 1984

- Amend to ensure that Torres Strait fisheries are managed with appropriate output controls, to improve operational and administrative efficiency of the Torres Strait fishery management arrangements and to facilitate consistency with *Fisheries Management Act 1991*, the *Fisheries Act 1994* (Qld) and established operational practice except as required by the Torres Strait Treaty with Papua New Guinea.

Fisheries Administration Act 1991

- Amend to ensure the Australian Fisheries Management Authority has all appropriate functions and powers to undertake its role in the Torres Strait.

Fisheries Levy Act 1984

- Amend to permit cost recovery for Torres Strait fisheries in line with new arrangements.

Operational aspects of the Torres Strait Fisheries

Traditional Fishing

After ensuring the sustainability of the fisheries, the Treaty establishes traditional fishing as having a priority over other forms of harvest.

Traditional fishing is the taking, by traditional inhabitants for their own, or their dependants' consumption, or for use in traditional activities, of the living natural resources of the sea (including turtles and dugongs). The sea includes the seabed, estuaries and coastal tidal areas. Torres Strait traditional inhabitants of both PNG and Australia may undertake traditional fishing activities in both the Australian and PNG waters of the TSPZ. In line with a policy of placing few restrictions on traditional fishing, traditional fishers may be exempt from size restrictions, a prohibition on the taking of female crabs and some other restrictions that may apply to either commercial or recreational fishing. However, some regulation of traditional fishing occurs, including the implementation of gear restrictions, bag limits and area closures (eg Dugong and Tropical Rock Lobster). These regulations are implemented with the support of traditional fishers.

Catch Sharing Obligations (with PNG)

Catch sharing obligations with PNG apply to certain fisheries, under Articles 22 and 23 of the Treaty. Where Australia and PNG identify a fishery in the TSPZ as one where common conservation and management arrangements should apply, they must negotiate arrangements to share the catch as prescribed by the Treaty. Catch sharing arrangements apply in the Tropical Rock Lobster and Prawn fisheries and will soon be activated for Spanish Mackerel.

The catch sharing formula applied to commercial fishing is set out in Article 23 of the Treaty. It says:

In respect of any relevant period where the full allowable catch of a particular Protected Zone commercial fishery might be taken, each Party shall be entitled to a share of the allowable catch apportioned...as follows:

- (a) in areas under Australian jurisdiction, except as provided in (b) below:
 - Australia – 75 per cent
 - Papua New Guinea – 25 per cent
- (b) within the territorial seas of Anchor Cay, Black Rocks, Bramble Cay, Deliverance Island, East Cay, Kerr Islet, Pearce Cay and Turu Cay:
 - Australia – 50 per cent
 - Papua New Guinea – 50 per cent
- (c) in areas under Papua New Guinea jurisdiction:
 - Australia – 25 per cent
 - Papua New Guinea – 75 per cent

Commercial fishing:

Community Fishing

Community fishing is carried out by traditional inhabitants on a commercial basis. Entitlements are issued through Traditional Inhabitant Boat (TIB) fishing licences. Eligibility to hold a TIB licence is dependant on a person's eligibility to qualify as a traditional inhabitant under the Treaty.

Non-community commercial fishers

Non-community (or non-traditional inhabitant) commercial fishers can only enter the Torres Strait fisheries **either** by joining the crew of a boat licensed under a Torres Strait Fishing Boat Licence known as a Transferable Vessel Holder (TVH) licences, **or** by buying an existing TVH licence. TVH licences are endorsed for one or more of the following fisheries:

- Tropical Rock Lobster
- Reef Line
- Spanish Mackerel
- Pearl Shell
- Beche de Mer, and
- Prawn.

Some TVH licences do not have any endorsements in the above fisheries and these licences can only operate in fisheries which are not covered by a Management Notice (for example squid and sponge). A Torres Strait Master Fisherman's Licence is also required to work on a TVH licensed boat. The Master Fisherman's Licence must be endorsed for the same fishery or fisheries as the TVH licence.

Fishing capacity and sustainability

Prawn Fishery

The Torres Strait Prawn Fishery is a multi-species prawn fishery (endeavour, tiger and king prawns) that operates in the eastern part of the Torres Strait. This is the most valuable commercial fishery in the Strait. The fishery is considered fully exploited at the current level of effort.

Tropical Rock Lobster Fishery

The Torres Strait Tropical Rock Lobster Fishery is the second most valuable commercial fishery in Torres Strait and very important to many Torres Strait Islanders. The fishery is based on a single species, the tropical rock lobster (*Panulirus ornatus*). In 2000 it was found that the stock was possibly over-exploited and a range of controls (such as area closures and a reduction in effort) were put in place. These are forecast to lead to a recovery of the stock to healthy levels in three to nine years.

Finfish Fishery

The Torres Strait Finfish Fishery has two sectors: Spanish Mackerel and Reef Line.

Spanish Mackerel

The Spanish Mackerel Fishery operates mostly in the eastern Torres Strait, targeting the narrow-barred Spanish mackerel (*Scomberomorus commerson*). In 1999, the fishery was expanded to include school mackerel (*Scomberomorus queenslandicus*), grey mackerel (*Scomberomorus semifasciatus*), spotted mackerel (*Scomberomorus munroi*) and shark mackerel (*Grammatorcynus bicarinatus*). Current information indicates that this stock has been relatively stable over several decades. Although the Spanish Mackerel stocks in Torres Strait were once thought to be migratory, there is emerging evidence that there is limited movement between the Torres Strait and the Gulf of Carpentaria or Queensland east coast.

Reef Line

The Torres Strait Reef Line sector targets multiple species of reef fish and is concentrated in the eastern section of the Torres Strait. The fishery focuses on the coral trout (*Plectropomus spp.*), mixed reef fish (*Lutjanus spp.* and *Lethrinus spp.*) and numerous species of rock cods (*Epinephelus spp.*). Barramundi is also harvested although the harvest of this species is very low and there is little commercial activity beyond community markets.

While there is limited activity in the reef line sector, there is a need to develop a better understanding of the health of fish stocks. Research is currently underway which will provide a better assessment of the sustainability of reef fish in the TSPZ. Improved data collection, particularly from the Community fishers, is also underway.

Pearl Shell Fishery

The gold-lipped pearl shell (*Pinctada maxima*) and the black-lipped pearl shell (*Pinctada margaritifera*) are the main species targeted in the Torres Strait, although there are five other species. Past surveys show the abundance of pearl shell is low. There is a prohibition on wild harvest although there has been occasional harvest for recruitment.

Turtle and Dugong Fishery

Hunting for turtle and dugong is important in Torres Strait Islander culture and a significant source of protein for Islanders. Dugong and turtle can only be taken by traditional fishers and used for traditional purposes. There is growing evidence that current harvest levels may not be sustainable and there are a range of strategies under development by PZJA agencies to better manage this fishery.

Bêche-de-mer Fishery

The fishery was mostly based on sandfish (*Holothuria scabra*) however harvesting of this species has been discontinued. Currently, fishing focuses on surf redfish (*Actinopyga mauritiana*), black teatfish (*Holothuria whitmaei*), white teatfish (*Holothuria fuscogilva*) and other lower value species. Bêche-de-mer is susceptible to overfishing because they are large, easily seen and caught. The PZJA has recently implemented a reduction in the (annual) total allowable catch for this fishery as a precautionary measure.

Trochus Fishery

The Torres Strait Trochus (*Trochus niloticus*) Fishery is a small, single-species commercial and subsistence fishery. The fishery was an important source of income for the region between 1920 and 1950, and again during the 1980's. The fishery remains a source of income for Islanders, especially women and children, however activity in the fishery is low due to a decline in the market demand for shells in button manufacture.

Crab Fishery

The Torres Strait Crab Fishery mostly targets mud crab (*Scylla spp.*) although a small quantity of blue swimmer crab (*Portunus pelagicus*) is taken. Mud crabs are mostly caught by hand or using scoop nets. Stock levels of the fishery are not known however participation in this fishery is low because other fisheries are more profitable.

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