

<b>TORRES STRAIT PRAWN MANAGEMENT ADVSIORY COMMITTEE</b>	<b>Meeting No. 4 14-15 June 2007</b>
<b>Torres Strait fisheries legislative amendments</b>	Agenda Item No. 12.1

## RECOMMENDATION

The TSPMAC recommends the PZJA **NOTES** that the TSPMAC has been advised of the new legislative changes affecting the Torres Strait fisheries.

## BACKGROUND

In order to implement new management arrangements, PZJA 19.3 agreed that amendments to the *Torres Strait Fisheries Act 1984* (the Act) were required. Following this, the Department of Agriculture, Fisheries and Forestry developed drafting instructions based on PZJA agreed principles that:

- (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.

Information about amendments including drafting instructions were provided to the following industry groups between July 2006 and January 2007:

- Community Fisher 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 prescribed bodies corporate.

On 23 May 2007, the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, the Hon Sussan Ley MP, introduced the Fisheries Legislation Amendment Bill (the Bill) and the Fisheries Levy Amendment Bill into the Australian Parliament. The Bill is scheduled for consideration by both houses of the Australian Parliament by 21 June 2007.

A summary of amendments (as they affect fishers) forms [Attachment 12.1A](#) and a description of the criminal law aspects forms [Attachment 12.1B](#).

## Attachment 12.1A – Torres Strait legislative amendments

### Summary of Amendments

Amendments discussed in this attachment were approved by the Torres Strait Protected Zone Joint Authority (PZJA) at its 19<sup>th</sup> and 20<sup>th</sup> meetings (April and October 2006).

#### 1.1 Output controls

##### *Changes to be implemented by legislation*

Changes to the following aspects of fisheries management will not come into force for twelve months after royal assent to allow sufficient time to prepare administrative systems and to allow further consultation with stakeholders.

- The power to issue a fish receivers licence will be introduced to ensure the total allowable catch is maintained under the output controls. This is consistent with the requirements of the FM Act and Queensland fisheries and will provide for an important source of data on harvest levels. Torres Strait fish receivers were previously required to hold a fish buyers licence under Queensland law.
- The power to issue a licence to commercially fish without a boat in addition to existing powers to issue licences to commercially fish with a boat. This will enable greater flexibility and a more comprehensive tool kit to ensure the total allowable catch of a fishery is maintained under the output controls, such as permitting regulation of people who hand fish from shore and provide a legislative basis for operators to retain their licences when they lose their boat through misadventure at sea, as current arrangements rely on licence administration policy alone.

##### *Changes to be implemented by subordinate legislation (regulations or legislative instrument)*

- Improvements to management plan powers to clarify their operation (including objectives and performance criteria) and ensure that the PZJA can exercise the powers of the Minister to determine a Management Plan.
- Clarification about the requirements for information to be kept on the Register in light of the changes to the management plan powers.
- A new power to facilitate community fisher compliance with the output controls by requiring a community fishers to hold a master fisherman's licence. Community fishers will only need to comply with this requirement unless a specific declaration has been made under Section 17. Declarations would likely only be made in fisheries where output controls are in place.
- The capacity for licences to be transferred on a temporary basis to enable operators to maximise the economic returns from their entitlements will be available.
- The power to implement an infringement notice scheme to facilitate compliance with the new output control will be introduced. An infringement notice system would be introduced by regulations (as currently occurs in the context of the FM Act) and would be subject to a process of consultation prior to implementation.
- Because the penalties imposed by an infringement notice scheme can be no greater than one-fifth the penalty imposed by a court, a new power to introduce a demerit point system (also by regulation) will be available.

## 1.2 Operational and administrative efficiency of fishery management

The following changes are implemented by legislation and will commence 28 days after royal assent.

- Definition of Australian boat - Operational experience has shown that it is possible for boats which operate in the Protected Zone to fall within the definitions of both an *Australian boat* and a *Papua New Guinea boat*. That is, they may be owned, built and operated out of Australia but hold a Papua New Guinea licence. This situation has been clarified to prevent different offences and requirements applying in relation to these types of boats. The definition of Australian boat has been amended to exclude Papua New Guinea boats from its scope.
- Definition of traditional inhabitant - A large amount of administrative licensing policy has arisen to permit a broad range of people to qualify as traditional inhabitants. This issue is important as it is the qualification basis for holding an indigenous (Community) commercial fishing licence. Additional categories of people include former Papua New Guinea nationals who obtained Australian citizenship through an immigration amnesty in 1978/1979, children of these traditional inhabitants and Aboriginal people living on the Northern Cape York. The amendments allow for the establishment of clearer recognition of these persons within the legislative scheme. Persons would be prescribed by regulation.
- Objectives of the Act - A determination of how to interpret the various obligations under the Treaty has been the subject of numerous independent reports and legal advice. Greater guidance is provided in the Act about the Australia's rights and obligations under the Torres Strait Treaty.
- Powers – Currently Torres Strait fisheries are largely administered by the PZJA and the PZJA's have been more closely aligned to that of the Minister under the Act. This includes providing powers to adopt a management plan and to appoint officers.
- Registers – Amendments will facilitate effective public access to parts of the Register to ensure that stakeholders, such as researchers and operators, can effectively communicate with one another.
- Incorrectly issued licences – The current licensing requirements do not permit a licence to be issued until a licence fee and or levy has been “tendered”. Occasionally a cheque is tendered in payment and it is subsequently not honored. There is currently no provision to remedy the incorrectly issued licence and amendments ensure that incorrectly issued licences can be appropriately dealt with.
- Penalties – consistent with Commonwealth criminal policy, to convert existing dollar penalties have been converted to penalty units.

## 1.3 Consistency with the FM ACT

Amendments have been included to ensure greater consistency of Commonwealth fisheries policy across Commonwealth fisheries legislation.

- Definition of fishing – The definition of fishing in the TSF Act will be expanded to include all activities covered by the definition in the FM Act to prevent the possibility of defendants exploiting loopholes if prosecuted for engaging in illegal activity prior to actually taking fish (ie, for use of aggregating devices in searching for fish).

- Search Warrants – The existing warrants procedures are largely out of date when compared with current Australian criminal law policy, such as permitting Justices of the Peace to issue warrants. In addition, the provisions are not consistent with the provisions set out in the FM Act, which is a potential source of confusion for officers operating under both the FM Act and the TSF Act. This has been addressed through amendments to the TSF Act to bring its warrant provisions into line with the FM Act.
- Officer’s powers: fish receivers – amendments have been included to ensure that officers appointed under the TSF Act and officers appointed under the FM Act are able to exercise the same powers in relation to persons who receive fish.

#### 1.4 Consistency with the Fisheries Act 1994 (Qld)

Amendments have been included to facilitate greater consistency with Queensland practice:

- Renewal of licences – the narrow window for licence renewal has been amended so that licenses can be renewed not earlier than two months up to three months after the date of expiry in accordance with Queensland licensing practice.
- Developmental permits - Amendments will permit the grant permits for fishing that is developmental or exploratory but which may not be able to be subject to a permit issued under s 12 of the TSF Act for scientific purposes. Similar provisions are contained in s 76A of the *Fisheries Act 1994 (Qld)*.

#### 1.5 Whole of government approach to information collection and sharing (including for compliance and criminal law enforcement)

Amendments will allow the collection of and shared access to relevant catch and effort information including data collected through logbooks and vessel monitoring systems. The amendments allow for information to be collected for third parties in relation to breaches of law, border control and administration or research of fisheries or marine environments. The amendments also permit information to be shared which the Minister/PZJA it collects on its own behalf in relation to breaches of law, border control and administration or research of fisheries or marine environments. The amendments provide that information collection and sharing is authorised as provided by regulations and, as such, any arrangements made along these lines will be subject to consultation with industry and enjoy parliamentary scrutiny.

#### ***Fisheries Levy Act 1984***

Consequential amendments to the *Fisheries Levy Act 1984* have been made so that cost recovery may occur in fisheries against a management plan under the *Torres Strait Fisheries Act 1984*.

## **Attachment 13.1(B) – Torres Strait legislative amendments**

### **Criminal law aspects**

The amendments discussed in this attachment deal with criminal policy, administrative penalties and coercive powers and amendments consequential to these changes.

#### **1. *New offences and administrative penalties***

##### **1.1 Fishing without a boat**

To allow for the development of an administrative system and for further consultation, these offences will not take effect until 12 months after royal assent.

The current licensing regime in the Torres Strait permits a person to commercially fish “in respect of a boat”. Amendments will extend this regime to permit a person to commercially fish without a boat. These amendments permit new output controls on fishing to be more effectively and comprehensively applied. In extending the range of licences, mirroring offences apply in respect of both categories of commercial fishing licences. These offences will not commence for 12 months to allow for education about the offences and new licensing arrangements to be undertaken. In addition, consequential changes flowing from the new offences which are consistent with licensing arrangements in respect of a boat would be provided for, such as powers for the court to impose a fine equivalent to unpaid levies. Under the amendments it will be an offence:

- for a holder of a licence that authorises commercial fishing (other than community fishing) without the use of a boat to refuse or fail to provide information about fish taken in the course of that fishing as required under section 14
- for a holder of a licence that authorises commercial fishing (other than community fishing) without the use of a boat to provide information, in purported compliance with a requirement under section 14, that is false or misleading
- for a holder of a licence that authorises commercial fishing (other than community fishing) without the use of a boat to take fish in contravention of a prohibition under section 14
- to take, process or carry fish in the course of commercial fishing without the use of a boat where the taking, processing or carrying is in contravention of a prohibition under section 16
- to have possession or control of fish taken in the course of commercial fishing without the use of a boat where the fish were taken in contravention of a prohibition under section 16
- to search for fish in an area with the intention of engaging in commercial fishing without the use of a boat, where the taking of fish of that kind in that area would be a contravention of a prohibition under section 16
- to have, in the course of commercial fishing without the use of a boat, possession or control of equipment in contravention of a prohibition under section 16
- to have, in the course of commercial fishing without the use of a boat, possession or control of unregistered or unlicensed equipment in contravention of a prohibition under section 16.
- to engage in commercial fishing (other than community fishing) without the use of a boat without being licensed to do so.
- for a traditional inhabitant to engage in community fishing without the use of a boat without being licensed to do so in circumstances where a declaration under section 17 requires a licence.

## 1.2 Master Fishermen's licences for community fishers

To effectively manage an output control system, amendments will allow the Minister or the PZJA to extend the current requirements for non-indigenous commercial master fishermen to Community fishers. This will provide for more effective compliance with an output control regime. The penalty for this offence mirrors that which currently applies to non-indigenous commercial master fishermen. The requirement for community fishers to hold a master fisherman's licence will not have effect unless a Section 17 declaration is made and the offence provisions would also not take effect until such a declaration is made.

## 1.3 Fish Receivers

To allow for the development of an administrative system and for further consultation, these offences will not take effect until 12 months after royal assent.

Amendments will provide for a new regime of licensing of fish receivers to ensure that the total catch permitted in a fishery can be properly managed and accounted for. As part of the introduction of this new licensing regime, new offences have been created to ensure effective compliance with output controls. These offences will not commence for 12 months to allow for education about the offences and new licensing arrangements to be undertaken. The penalty levels for these offences are equivalent to those for contravening existing commercial fishing offences as there is an equivalence of opportunity for commercial gain from circumventing the output control regime. The amendments make it an offence:

- to purchase fish knowing that the fish have been taken in contravention of a prohibition under section 14; and
- to receive fish, the taking of which required a licence, for the purposes of selling the fish without being licensed to do so.

## 1.5 Suspension or cancellation of licences (incorrect-payment)

Amendments will allow the Minister to remedy a situation where a licence has been incorrectly issued. This may occur where a cheque has been tendered in payment of fees and levies and is subsequently not honoured. At present there is no remedy to recall or address this situation. There is currently a licence suspension and cancellation regime in the TSF Act. This regime has been extended to apply in circumstances where the licence has been incorrectly issued.

## 2. *Changes to TSF Act criminal policy and administrative penalties*

An infringement notice scheme (2.1) a demerit point system (2.2) would only apply if implemented by regulation, which would require consultation with industry and be subject to Parliamentary Scrutiny.

### 2.1 Infringement Notice Scheme

To facilitate an improved deterrence of breaches of licence conditions and other arrangements under the new output control systems, amendments will provide that an

infringement notice scheme may be introduced under regulations. This is consistent with the policy position under the FM Act and will be implemented in accordance with Commonwealth criminal law policy.

## 2.2 Demerit Point System

Given an Infringement Notice System will provide for lighter penalties than those applied through prosecution, amendments will provide for a demerit point system to be introduced under regulations so that there are consequences for habitual offenders.

## 2.3 Penalty Conversion

All current offences in the TSF Act are expressed in dollar values. Consistent with Commonwealth criminal law policy amendments have converted the dollar values in the legislation into penalty units.

## 2.4 Search Warrant Provisions

Under current arrangements officers may obtain warrants from a Justice of the Peace authorising an officer to enter land or premises (section 42). Amendments will modernise these provisions to achieve greater consistency with Commonwealth criminal law policy. This will provide both greater controls and protections including in relation to the circumstances when a warrant can be issued, that is it must be issued by a Magistrate rather than a Justice of the Peace and the procedures for executing a warrant. It will also assist officers operating under both the FM Act and the TSF Act to apply a consistent regime. These officers are already appropriately trained and qualified to execute FM Act warrants. Consistent with the FM Act, the regime would include telephone warrants to assist officers in the remote Torres Strait to operate effectively.

## 2.5 Identity Cards

Amendments will clarify that customs officers and inspectors appointed under the *Fisheries Act 1994* (Qld) are prescribed persons, when in uniform, and need not produce an identity card. This is consistent with provisions that exist for other uniformed officers such as the Australian Federal and Queensland Police forces.

The TSF Act currently describes members of the Australian Federal Police, a member of the Australian Defence Force or a member of the Queensland Police Force as prescribed persons. Australian Customs and the inspectors within the Queensland Boating and Fisheries Patrol (QBFP) also have important enforcement functions in the Torres Strait Protected Zone. Customs officers are already prescribed officers under the FM Act and amendments will make them prescribed officers under the TSF Act. QBFP officers are responsible for domestic compliance in the Torres Strait fisheries and will also be made prescribed officers under the TSF Act to reflect contemporary practice.

## 2.6 Officer's Powers

The scope of powers of officers has been clarified to make them consistent with the FM Act. These include greater clarity regarding:

- powers requiring a master of a vessel to stop and the powers that an officer can exercise if the boat does not stop. As for the FM Act, these powers do not apply to Australian vessels.
- the use of force to ensure that officers appointed under the TSF Act and officers appointed under the FM Act are able to use force in a consistent manner.
- powers associated with fish receivers to ensure that officers appointed under the TSF Act and officers appointed under the FM Act are able to exercise the consistent powers in relation to persons who receive fish. This is part of the effective introduction of output controls to end overfishing.

These amendments have the effect of creating a greater scope for the offence of obstructing an officer. However, this is a consistent application of Commonwealth fisheries policy.

### ***3. Changes to existing TSF Act offences flowing from the change to the definition of fishing***

The current TSF Act definition of fishing is not as broad as the definition in the FM Act and this presents the possibility of defendants exploiting loopholes if prosecuted for engaging in illegal activity prior to actually taking fish (ie, for use of aggregating devices in searching for fish). The definition has been amended to ensure these loopholes are addressed in accordance with existing arrangements in other Commonwealth managed fisheries under the FM Act. This will have the effect of broadening the reach of some offence provision in which the word “fishing” is used (including sections 14, 16, 44, 45, 46B and 54). However, this type of activity is currently considered fishing in the rest of Commonwealth fisheries waters and this policy should be applied consistently in Torres Strait waters (that are managed under Commonwealth law).

<b>TORRES STRAIT PRAWN MANAGEMENT ADVISORY COMMITTEE</b>	<b>Meeting No. 4 14-15 June 2007</b>
<b>Alternative options to leasing</b>	Agenda Item No. 12.2

## RECOMMENDATIONS

The TSPMAC **NOTES** that the TSPEHA propose an alternative to leasing in the TSPF that involves a competitive TAC in the fishery capped at 6,867 nights, with a handing back of the nights removed in the 31% pro rata reduction for the 2006 season.

## BACKGROUND

The voluntary tender process in 2005 resulted in 2,333 days of effort and 16 commercial licences being surrendered in the TSP fishery. In late 2005, via a PZJA out-of-session decision, an overall cap of 9,200 fishing days for the 2006 season was implemented. Relevant PZJA decisions are listed in Attachment 12.2A. In addition, a process of leasing units of effort within the fishery has been proposed by government as a means to ensure the fishery is fully utilized.

## DISCUSSION

Industry representatives have expressed concern of the effect that the effort reduction process has had on individual asset values. As such, the TSPEHA have developed several alternative options to leasing within the fishery that would aid in reinstating their pre-2006 asset value (outlined below).

### TSPEHA proposal:

The TSPEHA have raised a proposal to introduce a competitive TAC in the fishery capped at 6867 nights, with a handing back of the nights removed in the 31% pro rata reduction for the 2006 season. The TSPEHA proposal consists of three components, outlined below:

- 1) Return the 31.2% that was taken from the fishery as part of the 2006 process.

**TSPEHA justification:** This will appease the financial institutions and give licencees back their pre-2006 asset value (this will give 9,981 days).

- 2) Change the days system so that licencees hold 9,981 days but are only able to fish until the Australian share of the TAE is reached, i.e. 6,867. In essence it is a global TAE with each licence holder capped to their own ITE.

**TSPEHA justification:** This will allow unused days within the fishery to be utilized while not exceeding the  $E_{MSY}$ .

- 3) Continue to develop the tiger/endeavour spatial scenario so that more than 6,867 days can be used in the fishery by directing effort towards endeavour prawns.

**TSPEHA justification:** To utilize all fishery resources (tiger and endeavour prawns) to the maximum sustainable level.

The TSPMAC meeting offers an opportunity for members to discuss the alternative options to leasing suggested by the TSPEHA and to add additional options for presentation to the PZJA for decision.

**Attachment 12.2A: Alternatives to leasing – Relevant PZJA decisions**

PZJA 18: Administration of surrendered entitlements

6D.1 The PZJA **NOTED**:

- (a) that the Australian Government Department of Agriculture Fisheries and Forestry on behalf of the Australian Government, recently conducted a tender to fund payments to eligible licence holders for the voluntary surrender of fishing concessions in the Torres Strait Prawn Fishery;
- (b) the tender resulted in the surrender of 2333 allocated fishing days from the prawn fishery and the removal of 16 commercial licences from the fishery; and

Decisions made by teleconference on 3 November 2005 and confirmed at PZJA 19

15.4 In respect of the Torres Strait Prawn fishery, the PZJA:

- (a) **AGREED** that, consistent with scientific advice, licences will be granted for the 2006 season with pro-rata reductions to an overall cap of 9197 days;
- (b) **NOTED** that fishing effort in recent years has been significantly below this level;
- (c) **AGREED** that the fishery will move to modern management arrangements including the adoption of a unitised system where effort levels in the fishery are adjusted in accordance with sustainable catches and that the system of unitisation will be developed over the course of 2006 to commence in 2007;
- (d) **NOTED** that, in relation to a sustainable level of the fishery and as announced on 27 July 2005, the Australian Government will fund payments to non-Islander commercial fishers to ensure that the Australian Government is able to fully meet its obligation to Papua New Guinea under the Torres Strait Treaty without making further calls on fishing entitlements allocated to domestic operators; and
- (e) **NOTED** that the Australian Government is scheduled to conduct a voluntary open tender process in the first half of 2006 to fulfill this commitment.

15.14 With respect to the Torres Strait Prawn Fishery:

- (a) the PZJA **CONFIRMED** its previous decision that a total of 9,197 fishing days is considered the maximum amount of effort that should be allowed in the prawn fishery for sustainability reasons;

Decisions made by correspondence on 24 February 2006

15.15 With respect to the Torres Strait Prawn Fishery the PZJA **AGREED** to:

- (a) to vary its policy that entitlement holders must hold a minimum of 50 days to operate in the fishery, to a minimum of 34 days during 2006 (commensurate with the pro-rata sustainability reduction) with a view to this issue being resolved in the longer term through the development of the management plan;
- (b) to the boat replacement and effort trading policies being suspended during 2006 in order to further assist the industry to restructure itself, with a view to this issue being resolved in the longer term through the development of the management plan.