

# EXPOSURE DRAFT



EXPOSURE DRAFT

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

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I, Richard Colbeck, Assistant Minister for Agriculture and Water Resources and Parliamentary Secretary to the Minister for Agriculture and Water Resources, acting for and on behalf of the Protected Zone Joint Authority, determine the following management plan.

Dated 2018

Richard Colbeck [**DRAFT ONLY—NOT FOR SIGNATURE**]

Assistant Minister for Agriculture and Water Resources

Parliamentary Secretary to the Minister for Agriculture and Water Resources

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Introduction **Part 1**  
Preliminary **Division 1**

Section 1

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## Part 1—Introduction

### Division 1—Preliminary

#### 1 Name

This instrument is the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.

#### 2 Commencement

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

| Commencement information        |  |              |
|---------------------------------|--|--------------|
| Column 1                        | Column 2                                     | Column 3     |
| Provisions                      | Commencement                                 | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. |              |

Note: This table relates only to the provisions of this instrument as originally made.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

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

#### 3 Authority

This instrument is made under section 15A of the *Torres Strait Fisheries Act 1984*.

Note: Paragraph 35(1)(a) of the *Torres Strait Fisheries Act 1984* provides for the Protected Zone Joint Authority to exercise the powers of the Minister under section 15A of that Act.

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## Part 1 Introduction

## Division 2 Definitions

### Section 4

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## Division 2—Definitions

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) commercial fishing licence;
- (b) Torres Strait Treaty;
- (c) traditional fishing;
- (d) traditional inhabitant.

In this instrument:

**AAT** means the Administrative Appeals Tribunal.

**Act** means the *Torres Strait Fisheries Act 1984*.

**allocation day** means:

- (a) if no application for review of a decision is made under section 21 within the period for making such an application—the day after the end of that period; or
- (b) otherwise—the day after all such reviews are finally determined, or otherwise disposed of, by the AAT and, if an appeal in relation to the review is made to the Federal Court of Australia, by the Federal Court of Australia.

**approved form** means a form approved under section 29.

**Authority** means the Protected Zone Joint Authority established by section 30 of the Act.

**catch history notice**: see subsection 18(2).

**catch verification policy** means the document titled “Catch History Verification Policy for the Torres Strait Rock Lobster Fishery” published by the Authority in May 2016, as that document exists at the commencement of this instrument.

Note: The catch verification policy could in 2018 be viewed on the Authority’s website (<http://www.pzja.gov.au>).

**final boat catch history**: see subsection 20(2).

**fishing season** means the period specified in an instrument made under section 16 of the Act during which a person who holds a TRL fishing licence is permitted to take, process or carry tropical rock lobster.

**objection period**, in relation to a catch history notice, means the period mentioned in paragraph 19(2)(b).

**PPSA security interest** (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies.

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- Note: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:
- (a) section 8 (interests to which the Act does not apply);
  - (b) section 12 (meaning of *security interest*).

***primary boat licence*** means a commercial fishing licence that:

- (a) authorises the use of an Australian boat for taking tropical rock lobster in the TRL fishery; and
- (b) is not a commercial fishing licence that is described as a Torres Strait traditional inhabitant fishing boat licence; and
- (c) is not a tender boat licence.

***principal holder***, in relation to a primary boat licence or a tender boat licence, means:

- (a) if the licence has not been transferred under section 25 of the Act—the person to whom the licence was granted; or
- (b) if the licence has been transferred under section 25 of the Act other than as a temporary transfer under that section—the person to whom the licence was last transferred other than as a temporary transfer under that section; or
- (c) if the licence is subject to a temporary transfer under section 25 of the Act from a person (the *transferor*) to another person—the transferor.

***processed tropical rock lobster*** means tropical rock lobster that has been processed so that only the tail of the lobster remains.

***provisional boat catch history***: see subsection 18(4).

***provisional total catch history*** means the sum of each provisional boat catch history for all primary boat licences that are in force on the snapshot day.

***quota unit*** means a unit of fishing capacity in the TRL fishery.

***Register*** means the Register of Quota Units for the Torres Strait Tropical Rock Lobster Fishery mentioned in subsection 22(1).

***snapshot day*** means the day after the end of the period of 60 days beginning on the day this instrument commences.

***temporary transfer*** means a temporary transfer of unused quota units for a fishing season under section 26.

***tender boat licence*** means a commercial fishing licence that:

- (a) is granted in respect of an Australian boat that is a boat generally known as a tender; and
- (b) authorises the use of the boat for taking tropical rock lobster in the TRL fishery; and
- (c) specifies a primary boat, that is the subject of a primary boat licence, with which the tender must operate.

***total allowable catch***, for a fishing season, means the total allowable catch determined under subsection 13(1).

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## Part 1 Introduction

### Division 2 Definitions

#### Section 5

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**traditional inhabitant sector** means the group of people who fish commercially for tropical rock lobster in the TRL fishery as authorised by traditional inhabitant TRL fishing licences.

**traditional inhabitant TRL fishing licence** means a TRL fishing licence of a kind that can only be granted to a traditional inhabitant.

**TRL fishery** (short for tropical rock lobster fishery) means the area of Australian jurisdiction described by item 9 of Schedule 2 to the *Torres Strait Fisheries Regulations 1985*.

**TRL fishing licence** (short for tropical rock lobster fishing licence) means:

- (a) a commercial fishing licence that authorises the use of an Australian boat for taking tropical rock lobster in the TRL fishery; or
- (b) a licence that is in force under subsection 19(4A) of the Act that authorises the taking of tropical rock lobster in the TRL fishery without the use of a boat.

**tropical rock lobster** means fish of the species *Panulirus* spp.

**TSRA** means the Torres Strait Regional Authority established by section 142 of the *Aboriginal and Torres Strait Islander Act 2005*.

**TVH sector** (short for transferrable vessel holder sector) means the group of people who fish commercially for tropical rock lobster in the TRL fishery as authorised by TRL fishing licences that are primary boat licences or tender boat licences.

**unused quota units**: see section 5.

#### 5 Meaning of unused quota unit

At the start of a fishing season, all quota units are **unused quota units** for that fishing season.

Note: Unused quota units for a fishing season can only be used in that fishing season.



## Division 3—Objectives of management plan

### 6 Objectives

The objectives of the management plan in this instrument are the same as those set out in paragraphs 8(a) to (g) of the Act.

### 7 Assessing objectives

The following table sets out:

- (a) the objectives of the management plan in this instrument; and
- (b) the measures by which each objective is to be attained; and
- (c) the performance criteria against which measures taken under the management plan are to be assessed; and
- (d) the time frames within which measures taken under the management plan are to be assessed against the performance criteria.

| <b>Assessing objectives of the management plan</b> |   |  |  |                     |
|--|---|--|--|---------------------|
| <b>Item</b>  | <b>Objectives</b>   | <b>Measure</b>   | <b>Performance criteria</b>  | <b>Time frame</b>   |
| 1  | (a) to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants;<br>(b) to manage the TRL fishery for optimum utilisation;<br>(c) to protect and preserve the marine environment;<br>(d) to adopt conservation measures in a way that minimises restrictive effects on traditional fishing;<br>(e) to administer Part 5 of the Torres Strait Treaty so as not to prejudice achievement of Part 4 of the Treaty in regard to traditional fishing;<br>(f) to share the total allowable catch with Papua New Guinea | determining the total allowable catch for a fishing season | the total allowable catch for a fishing season is determined in accordance with section 13 | each fishing season |
| 2  | (a) to acknowledge and protect the traditional way of life and livelihood of traditional  | implementing the quota unit system                         | the catch of tropical rock lobster for a fishing season is at or below the total           | each fishing season |

# EXPOSURE DRAFT

## Part 1 Introduction

Objectives of management plan

### Section 7

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| <b>Assessing objectives of the management plan</b> |   |   |   |   |
|--|---|---|---|---|
| <b>Item</b>  | <b>Objectives</b>   | <b>Measure</b>  | <b>Performance criteria</b>                                 | <b>Time frame</b>                                   |
|  | inhabitants;<br>(b) to manage the TRL fishery for optimum utilisation;<br>(c) to protect and preserve the marine environment;<br>(d) to adopt conservation measures in a way that minimises restrictive effects on traditional fishing;<br>(e) to administer Part 5 of the Torres Strait Treaty so as not to prejudice achievement of Part 4 of the Treaty in regard to traditional fishing |   | allowable catch for the fishing season                      |   |
| 3  | (a) to manage the TRL fishery for optimum utilisation;<br>(b) to have regard, in developing and implementing licensing policy, to the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants   | allocating quota units to the traditional inhabitant sector | the Authority carries out the review required by section 17 | within 2 years of the day this instrument commences |

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## Part 2—Fishing in the TRL fishery

### Division 1—Taking tropical rock lobster

#### 8 Who may take tropical rock lobster in the TRL fishery

- (1) A person (whether or not a traditional inhabitant) may take tropical rock lobster in the TRL fishery during a fishing season if, at the time the tropical rock lobster are taken:
- (a) the person holds a TRL fishing licence; and
  - (b) the person holds unused quota units for the fishing season (whether or not by way of a temporary transfer).

Note: The taking of tropical rock lobster may also be authorised by a Papua New Guinea licence that has been endorsed under section 20 of the Act or a permit granted under section 12 of the Act. The management of such fishing is not covered by this instrument.

- (2) A person who is a traditional inhabitant may take tropical rock lobster in the TRL fishery during a fishing season if, at the time the tropical rock lobster are taken:
- (a) the person holds a traditional inhabitant TRL fishing licence; and
  - (b) a notice under section 11 is not in force in relation to the fishing season.
- (3) To avoid doubt, a person is not required to hold unused quota units for the fishing season if the person is:
- (a) carrying or transshipping tropical rock lobster on board a boat; or
  - (b) engaging in fishing activities that are specified in, and authorised by, a permit for scientific or developmental purposes (provided the permit does not specify that the person must hold unused quota units in relation to those activities).

Note: This section does not apply to traditional inhabitants engaged in traditional fishing. Under an arrangement made under section 31 of the Act the Authority has the management of commercial fishing, which is defined in the Act as not including traditional fishing.

#### 9 Quantity of tropical rock lobster that may be taken by person holding unused quota units

The number of kilograms of tropical rock lobster that a person may take at a particular time (the *calculation time*) during a fishing season under subsection 8(1) is worked out according to the following formula:

$$\left( \begin{array}{c} \text{Total number} \\ \text{of} \\ \text{unused quota units} \end{array} \times \begin{array}{c} \text{Value of a} \\ \text{quota unit} \end{array} \right) - \begin{array}{c} \text{Amount of} \\ \text{unprocessed} \\ \text{tropical rock} \\ \text{lobster taken} \end{array} - \left( \begin{array}{c} \text{Amount of} \\ \text{processed} \\ \text{tropical rock} \\ \text{lobster taken} \end{array} \times \begin{array}{c} \text{Conversion} \\ \text{factor} \end{array} \right)$$

where:

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## Part 2 Fishing in the TRL fishery

### Division 1 Taking tropical rock lobster

#### Section 10

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**amount of processed tropical rock lobster taken**, in relation to a person, means the amount of processed tropical rock lobster that the person has taken under the person's TRL fishing licence during the fishing season and before the calculation time, on the basis of subsection 8(1).

**amount of unprocessed tropical rock lobster taken**, in relation to a person, means the amount of unprocessed tropical rock lobster that the person has taken under the person's TRL fishing licence during the fishing season and before the calculation time, on the basis of subsection 8(1).

**conversion factor** means the conversion factor mentioned in section 10.

**total number of unused quota units**, in relation to a person, means the total number of quota units that the person holds at the start of the fishing season:

- (a) less the total number of unused quota units for the fishing season that the person has transferred (whether permanently or temporarily) to another person during the fishing season as at the calculation time (if any); and
- (b) plus the total number of unused quota units for the fishing season that have been transferred (whether permanently or temporarily) to the person from another person during the fishing season as at the calculation time (if any).

**value of a quota unit** means the value of a quota unit for the fishing season, worked out in accordance with section 12.

#### 10 Weight conversion of processed tropical rock lobster

For the purposes of working out the number of kilograms of tropical rock lobster that a person may take in the TRL fishery, the conversion factor to be applied if the person processes tropical rock lobster so that only the tail of a lobster remains is 2.677.

#### 11 Notice when quota for traditional inhabitant sector reached

##### *Application of this section*

- (1) This section applies if, during a fishing season, the total amount of tropical rock lobster taken by traditional inhabitants in the TRL fishery under traditional inhabitant TRL fishing licences reaches the quota for the traditional inhabitant sector for the fishing season, which is worked out by multiplying:
  - (a) the number of unused quota units for the fishing season that the TSRA holds (whether or not by way of a temporary transfer); by
  - (b) the value of a quota unit for the fishing season, worked out in accordance with section 12.
- (2) In determining the total amount of tropical rock lobster taken by traditional inhabitants for the purposes of subsection (1):
  - (a) tropical rock lobster that a traditional inhabitant has taken does not count towards the total amount if the tropical rock lobster was taken under subsection 8(1) on the basis of unused quota units for the fishing season

# EXPOSURE DRAFT

Fishing in the TRL fishery **Part 2**  
Taking tropical rock lobster **Division 1**

## Section 11

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that the individual traditional inhabitant holds (whether or not by way of a temporary transfer); and

- (b) if an amount of tropical rock lobster has been taken as processed tropical rock lobster, the amount of processed tropical rock lobster must be multiplied by the conversion factor mentioned in section 10.

### *Requirement to issue notice*

- (3) The Minister must issue a notice in relation to the fishing season stating that:
  - (a) the quota for the traditional inhabitant sector has been reached for the fishing season; and
  - (b) traditional inhabitants can no longer fish commercially for tropical rock lobster in the TRL fishery under subsection 8(2) during the fishing season.
- (4) The notice must:
  - (a) be in writing; and
  - (b) be dated; and
  - (c) be given to:
    - (i) the TSRA; and
    - (ii) each traditional inhabitant who holds a traditional inhabitant TRL fishing licence; and
  - (d) be published on the Authority's website.
- (5) The notice comes into force when it is issued and remains in force until the end of the fishing season, unless revoked earlier.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

# EXPOSURE DRAFT

Part 2 Fishing in the TRL fishery

Division 2 Value of quota units

Section 12

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## Division 2—Value of quota units

### 12 Value of quota units

- (1) The value of a quota unit for a fishing season, expressed in kilograms, is worked out according to the following formula:

$$\frac{\text{Total allowable catch}}{\text{Total number of quota units}}$$

where:

*total allowable catch* means the total allowable catch for the fishing season, expressed in kilograms.

*total number of quota units* means the total number of quota units for the fishing season.

- (2) If the Minister increases the total allowable catch for a fishing season under section 14, the value of a quota unit is to be worked out again using the formula in subsection (1).

# EXPOSURE DRAFT

Fishing in the TRL fishery **Part 2**  
Total allowable catch **Division 3**

Section 13

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## **Division 3—Total allowable catch**

### **13 Determining the total allowable catch for a fishing season**

- (1) Before the start of a fishing season, the Minister must determine for the fishing season the total allowable catch of tropical rock lobster in the TRL fishery.
- (2) In making this determination, the Minister must:
  - (a) consult with any advisory committee that the Authority has established under subsection 40(7) of the Act to provide advice relating to the TRL fishery; and
  - (b) have regard to Australia's obligations under the Torres Strait Treaty.
- (3) In making this determination, the Minister may:
  - (a) consider the views of any person with an interest in:
    - (i) the TRL fishery; or
    - (ii) the ecologically sustainable use of the TRL fishery; and
  - (b) take into account the amount of tropical rock lobster taken in the TRL fishery as a result of other fishing, such as traditional fishing or recreational fishing.

### **14 Increasing the total allowable catch for a fishing season**

- (1) The Minister may increase the total allowable catch determined for a fishing season.
- (2) Subsections 13(2) and (3) apply to determining an increase in the total allowable catch for a fishing season in the same way as they apply to the making of a determination of the total allowable catch for a fishing season.

# EXPOSURE DRAFT

## Part 3 Allocation of quota units

### Division 1 Allocation of quota units for the TRL fishery

#### Section 15

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## Part 3—Allocation of quota units

### Division 1—Allocation of quota units for the TRL fishery

#### 15 Allocation of quota units—traditional inhabitant sector and TVH sector

- (1) On the basis that the fishing capacity of the TRL fishery is to be divided into 1,000,000 quota units, the Minister must, on a day that is within the 60 day period beginning on the allocation day, allocate:
  - (a) 562,000 of those quota units to the TSRA, to hold for the benefit of the traditional inhabitant sector; and
  - (b) 438,000 of those quota units to the TVH sector, in accordance with the provisional allocation of quota units made under Subdivision B of Division 3 and the outcome of any review of those allocations.

Note: Under this allocation, 56.2% of the fishing capacity of the TRL fishery is to be allocated to the traditional inhabitant sector and 43.8% to the TVH sector.

- (2) The Minister is to allocate a number of quota units to a person under subsection (1) by making an entry on the Register that the person holds that number of quota units.
- (3) The Minister must notify, in writing, each person to whom quota units have been allocated under subsection (1) of:
  - (a) the fact that the allocation has occurred; and
  - (b) the number of quota units that have been allocated to the person.

#### 16 Basis on which quota units are allocated

A quota unit allocated under this Division is allocated on the basis that:

- (a) the quota unit may be suspended or cancelled under section 28; and
- (b) the quota unit may be suspended, cancelled, revoked, terminated or varied by or under later legislation; and
- (c) no compensation is payable if the quota unit is suspended, cancelled, revoked, terminated or varied as mentioned in any of the above paragraphs.



# EXPOSURE DRAFT

Allocation of quota units **Part 3**  
Allocation to the traditional inhabitant sector **Division 2**

Section 17

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## **Division 2—Allocation to the traditional inhabitant sector**

### **17 Review of allocation**

- (1) Within 2 years of the day this instrument commences, the Authority must review the allocation of quota units to the traditional inhabitant sector under paragraph 15(1)(a).
- (2) In undertaking its review, the Authority may consider the following options:
  - (a) allocating quota units to a non-government legal entity that represents traditional inhabitants;
  - (b) allocating quota units to individual traditional inhabitants directly;
  - (c) a combination of the options mentioned in paragraphs (a) and (b).

# EXPOSURE DRAFT

Part 3 Allocation of quota units

Division 3 Allocation to the TVH sector

Section 18

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## Division 3—Allocation to the TVH sector

### Subdivision A—Verification of catch histories and tender boat licences

#### 18 Minister to notify provisional catch histories and numbers of tender boat licences

- (1) This section applies to a person who, on the snapshot day, is:
  - (a) the principal holder of one or more primary boat licences; or
  - (b) the principal holder of one more primary boat licences and one or more tender boat licences.
- (2) Within 60 days of the snapshot day, the Minister must ensure that each person to whom this section applies is given a notice (a *catch history notice*) that sets out:
  - (a) the provisional boat catch history for each primary boat licence for which the person is the principal holder; and
  - (b) the provisional total catch history; and
  - (c) if the person is the principal holder of one or more tender boat licences on the snapshot day:
    - (i) the number of tender boat licences for which the person is the principal holder; and
    - (ii) the total number of tender boat licences in force on the snapshot day.
- (3) The catch history notice must:
  - (a) be in writing; and
  - (b) be dated; and
  - (c) state that the person may, within the objection period, object in writing to the following:
    - (i) a provisional boat catch history set out in the catch history notice;
    - (ii) the number of tender boat licences for which the person is the principal holder (if any) as set out in the catch history notice; and
  - (d) set out the requirements for making an objection, and include a warning that giving false or misleading information is a serious offence; and
  - (e) include a statement to the effect that:
    - (i) the provisional boat catch history, and the number of tender boat licences (if any), as set out in the catch history notice are intended to be the basis for determining the number of quota units to be allocated to the person under this instrument; and
    - (ii) the actual number of quota units allocated to the person may depend on any objections to catch history notices made under section 19 (whether made by the person or by others) and the outcome of any reviews of decisions under section 21.
- (4) The *provisional boat catch history* for a primary boat licence is determined as follows:

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Allocation of quota units **Part 3**  
Allocation to the TVH sector **Division 3**

## Section 19

### *Method statement*

- Step 1. For each calendar year in the 5-year period from 1997 to 2001, determine the total weight of tropical rock lobster taken in relation to the primary boat licence.
- Step 2. From the 5 amounts determined under step 1, work out which are the 3 highest amounts.
- Step 3. Calculate the average of the 3 highest amounts worked out under step 2. The result is the *provisional boat catch history* for the primary boat licence.

- (5) The amounts referred to in step 1 of the method statement in subsection (4) must be determined in accordance with the Authority's catch verification policy.

### **19 Objection to catch history notices—requirements for making objection**

- (1) A person who is given a catch history notice under section 18 may object to the following:
- (a) a provisional boat catch history set out in the catch history notice;
  - (b) the number of tender boat licences for which the person is the principal holder (if any), as set out in the catch history notice.
- (2) The objection must:
- (a) be in writing; and
  - (b) be made:
    - (i) within 21 days of the date of the catch history notice; or
    - (ii) within such further period (if any) as the Minister, upon application made under subsection (3), by written notice to the person allows; and
  - (c) in relation to a provisional boat catch history—set out the grounds on which the person considers the provisional boat catch history should be based, and be accompanied by evidence that supports those grounds; and
  - (d) in relation to the number of tender boat licences—set out what number of licences the person considers should apply, and be accompanied by evidence that supports that claim.
- (3) Before the end of the period mentioned in subparagraph (2)(b)(i), the person may apply to the Minister for an extension of time within which to object.
- (4) The application for an extension of time must set out the reasons for making the application.

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## Part 3 Allocation of quota units

### Division 3 Allocation to the TVH sector

#### Section 20

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#### Subdivision B—Provisional allocation of quota units

#### 20 Provisional allocation of quota units

- (1) Within 3 months of the day after all of the objection periods in relation to catch history notices given under section 18 have ended, the Minister must do the following:
  - (a) determine the final boat catch history for each primary boat licence in force on the snapshot day;
  - (b) determine the number of tender boat licences as mentioned in subparagraph 18(2)(c)(i) for each person who was given a catch history notice under section 18, taking into account all objections to catch history notices made under section 19 in relation to the number of tender boat licences (if any);
  - (c) determine under subsection (6) of this section the number of quota units to be provisionally allocated to each person who was given a catch history notice under section 18; and
  - (d) give a notice to each person who was given a catch history notice under section 18 that sets out the number of quota units provisionally allocated to the person.

##### *Final boat catch history*

- (2) The **final boat catch history** for a primary boat licence is determined in the same way as the provisional boat catch history for the primary boat licence, except that in applying step 1 of the method statement in subsection 18(4), the amounts must be determined taking into account all objections to provisional boat catch histories made under section 19 (if any).
- (3) The Minister must consider an objection to a provisional boat catch history made under section 19 in accordance with the Authority's catch verification policy.

##### *Entitlement based on primary boat licences*

- (4) A person who is the principal holder of a primary boat licence on the snapshot day is entitled, in relation to the primary boat licence, to a provisional allocation of the number of quota units worked out according to the following formula:

$$\frac{350,400 \times \text{Final boat catch history}}{\text{Final total catch history}}$$

where:

**final boat catch history** means the final boat catch history for the primary boat licence as determined by the Minister in accordance with subsection (2).

**final total catch history** means the sum of each final boat catch history for all primary boat licences that are in force on the snapshot day.

Note: The number 350,400 in the formula represents 80% of the 438,000 quota units that are to be allocated to the TVH sector under section 15.

# EXPOSURE DRAFT

Allocation of quota units **Part 3**  
Allocation to the TVH sector **Division 3**

## Section 21

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### *Entitlement based on tender boat licences*

- (5) A person who is the principal holder of a tender boat licence on the snapshot day is entitled, in relation to the tender boat licence, to a provisional allocation of the number of quota units worked out according to the following formula:

$$\frac{87,600}{\text{Total number of tender boat licences}}$$

where:

***total number of tender boat licences*** means the total number of tender boat licences in force on the snapshot day.

Note: The number 87,600 in the formula represents 20% of the 438,000 quota units that are to be allocated to the TVH sector under section 15.

### *Number of quota units to be provisionally allocated*

- (6) The number of quota units to be provisionally allocated to a person who has been given a catch history notice under section 18 is to be determined by adding together the number of quota units that the person is entitled to:
- under subsection (4) for each primary boat licence for which the person is the principal holder; and
  - under subsection (5) for each tender boat licence for which the person is the principal holder (if any).

### *Notice of provisional allocation of quota units*

- (7) The notice mentioned in paragraph (1)(d) must:
- be in writing; and
  - be dated; and
  - specify the number of quota units that have been provisionally allocated to the person; and
  - provide details of any objection made by the person under section 19; and
  - provide details about the consideration of any such objection; and
  - state that the person may apply to the AAT under section 21 for review of the decision to provisionally allocate the particular number of quota units to the person.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* also requires notice of a decision and review rights to be given to persons whose interests are affected by the decision.

## **Subdivision C—AAT review of provisional allocation of quota units**

### **21 Review of provisional allocation of quota units by the AAT**

Applications may be made to the AAT for review of decisions of the Minister under section 20 to provisionally allocate a particular number of quota units to a person.

# EXPOSURE DRAFT

## Part 4 Administration of the quota unit system

### Division 1 Register of quota units

#### Section 22

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## Part 4—Administration of the quota unit system

### Division 1—Register of quota units

#### 22 Register—establishment

- (1) The registers kept under section 10 of the Act must include a register to be known as the Register of Quota Units for the Torres Strait Tropical Rock Lobster Fishery.
- (2) The Register is to be made available for inspection on request.

#### 23 Register—required information

##### *Required information about holders of quota units*

- (1) The Register must include the information mentioned in subsection (2) for each person who holds any of the following:
  - (a) quota units that were allocated to the person under section 15;
  - (b) quota units that were permanently transferred to the person under section 26;
  - (c) unused quota units for a fishing season that were temporarily transferred to the person under section 26.
- (2) The required information for subsection (1) is the following:
  - (a) the person's name;
  - (b) the total number of quota units held by the person;
  - (c) if the person holds one or more TRL fishing licences—the licence numbers for the licences.

##### *Required information for registering transfers of quota units*

- (3) If AFMA is required to register a permanent or temporary transfer of quota units under section 26:
  - (a) if the Register does not already include the information mentioned in subsection (2) of this section in relation to the person to whom the quota units are being transferred—that information must be included on the Register for the person; and
  - (b) the total number of quota units that is recorded on the Register under paragraph (2)(b) of this section for each party to the transfer must be updated to reflect the transfer of quota units.

##### *Corrections to the Register*

- (4) AFMA may correct, or cause to be corrected, any clerical error or obvious mistake in the Register.

# EXPOSURE DRAFT

## **Division 2—Trading of quota units**

### **24 Application to register a permanent transfer of quota units**

- (1) This section applies to a person (other than the TSRA) who holds one or more quota units that are:
  - (a) quota units that were allocated to the person under section 15; or
  - (b) quota units that were permanently transferred to the person under a previous application of this section.
- (2) The person may apply to AFMA to register a permanent transfer of some or all of those quota units to another person (who must not be a trust or a trustee of a trust).
- (3) An application under subsection (2) must be in the approved form.
- (4) A transfer has no effect until it is registered under section 26.

Note: The TSRA is not able to apply under this section to have quota units it holds permanently transferred to another person. The allocation of quota units to the traditional inhabitant sector is to be reviewed by the Authority within 2 years of the day this instrument commences: see section 17.

### **25 Application to register a temporary transfer of unused quota units for a fishing season**

- (1) A person who holds unused quota units for a fishing season (whether or not by way of a temporary transfer) may apply to AFMA to register a temporary transfer of some or all of the unused quota units to another person (who must not be a trust or a trustee of a trust).
- (2) An application under subsection (1) must be in the approved form.
- (3) A transfer has no effect until it is registered under section 26.
- (4) To avoid doubt, subsection (1) does not require the TSRA to transfer unused quota units to individual traditional inhabitants.

### **26 Registration of transfers of quota units and unused quota units**

- (1) This section applies if AFMA receives:
  - (a) an application under section 24 to register a permanent transfer of quota units; or
  - (b) an application under section 25 to register a temporary transfer of unused quota units for a fishing season.
- (2) AFMA must register the permanent transfer or temporary transfer (as the case requires) unless:
  - (a) the quota units are suspended under section 28; or
  - (b) a party to the transfer is being investigated for an offence against the Act or regulations made under the Act; or

# EXPOSURE DRAFT

## Part 4 Administration of the quota unit system

### Division 2 Trading of quota units

#### Section 27

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- (c) any fee, levy, charge or other money payable by a party to the transfer, in relation to a licence granted under section 19 of the Act or a quota unit, is due and has not been paid.

Note: Section 3 of the Act includes a definition of *offence against this Act*.

- (3) The transfer is to be registered by entering on the Register the information specified in subsection 23(3).

#### 27 Priority between quota unit interests and PPSA security interests

- (1) The priority between:

(a) quota units that are permanently or temporarily transferred (the *quota unit interest*), if the permanent or temporary transfer has effect under section 26 (by registration); and

(b) a PPSA security interest;

is as set out in the following table:

| Priority between PPSA security interests and quota unit interests |   |  |
|---|---|--|
| Item  | If ...  | then ...                                 |
| 1   | the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i>   | the quota unit interest has priority.    |
| 2   | (a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and<br>(b) the permanent or temporary transfer is registered under section 26 before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>      | the quota unit interest has priority.    |
| 3   | (a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and<br>(b) the permanent or temporary transfer is registered under section 26 at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i> | the PPSA security interest has priority. |

- (2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the quota unit interest.

Note: The effect of this subsection is that the priority between a quota unit interest and a PPSA security interest is to be determined in accordance with this instrument rather than the *Personal Property Securities Act 2009*.



# EXPOSURE DRAFT

## Division 3—Suspension and cancellation of quota units

### 28 Suspension and cancellation of quota units

#### *Suspension of quota units—TRL fishing licence able to be suspended*

- (1) The Minister may, by notice in writing given to a person who holds quota units (whether or not by way of a temporary transfer), suspend some or all of the quota units (including any that the person has temporarily transferred to another person) if:
- the person holds a TRL fishing licence; and
  - the Minister is satisfied that circumstances exist that would allow the TRL fishing licence to be suspended under subsection 26(1) of the Act.

Note: If the TRL fishing licence is suspended under subsection 26(1) of the Act, the licence holder's quota units are automatically suspended: see subsection (4) of this section.

- (2) If a quota unit is suspended under subsection (1), the suspension, unless it is revoked, ceases on the expiration of one month after the suspension.
- (3) The Minister may, at any time, by notice in writing given to the person who holds the quota units suspended under subsection (1), revoke the suspension.

#### *Effect of suspension of TRL fishing licence on licence holder's quota units*

- (4) If:
- a person holds quota units (whether or not by way of a temporary transfer); and
  - the person holds a TRL fishing licence; and
  - the TRL fishing licence is suspended under subsection 26(1) of the Act;
- the quota units (including any that the person has temporarily transferred to another person) are suspended for the period the TRL fishing licence is suspended.

#### *Cancellation of quota units—holder convicted of offence*

- (5) The Minister may, by notice in writing given to a person who holds quota units (whether or not by way of a temporary transfer), cancel some or all of the quota units (including any that the person has temporarily transferred to another person) if the person is convicted of an offence against the Act, regulations made under the Act or any other law of the Commonwealth relating to fishing or against a law of Papua New Guinea or of a State or Territory relating to fishing.

Note: Section 3 of the Act includes a definition of *offence against this Act*.

#### *Cancellation or suspension of quota units—money owing*

- (6) The Minister may, by notice in writing given to a person who holds quota units (whether or not by way of a temporary transfer), cancel or suspend some or all of the quota units (including any that the person has temporarily transferred to another person) if:

# EXPOSURE DRAFT

**Part 4** Administration of the quota unit system

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- (a) any fee, levy, charge or other money payable by the person, in relation to a licence granted under section 19 of the Act or a quota unit, is due; and
- (b) within such period as is specified in the notice:
  - (i) payment of the fee, levy, charge or other money is not made; or
  - (ii) the person does not enter into an arrangement satisfactory to the Minister in relation to payment of the fee, levy, charge or other money.

# EXPOSURE DRAFT

Administration of the quota unit system **Part 4**

Miscellaneous **Division 4**

Section 29

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## **Division 4—Miscellaneous**

### **29 Approved forms**

The Authority may, in writing, approve a form for the purposes of a provision of this instrument.

# EXPOSURE DRAFT

## Part 5 Application and transitional provisions

### Section 30

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## **Part 5—Application and transitional provisions**

### **30 Application of requirement to hold quota units to take tropical rock lobster in the TRL fishery**

- (1) Part 2 applies on and from the first day of the first fishing season that starts after the allocation of quota units under subsection 15(1) has occurred.
- (2) However, for that first fishing season, subsection 13(1) applies as if the Minister must determine the total allowable catch for the fishing season as soon as practicable after the start of the fishing season.