

EXPLANATORY STATEMENT

Issued by the authority of the Protected Zone Joint Authority

Torres Strait Fisheries Act 1984

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

The purpose of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (the Management Plan) is to give effect to decisions of the Protected Zone Joint Authority (PZJA) to establish a quota management system in the Torres Strait Tropical Rock Lobster fishery.

The PZJA acknowledges and supports the aspirations of traditional inhabitants of the Protected Zone to increase their ownership of commercial fishing access in the Tropical Rock Lobster (TRL) fishery to 100 per cent, an aspiration that extends to all commercial fisheries in the Torres Strait. The Management Plan establishes a quota management system that will, amongst other things, provide a mechanism for Traditional Inhabitants to increase their ownership of commercial fishing access in the TRL fishery to 100 per cent.

This Management Plan pursues the objectives of the *Torres Strait Fisheries Act 1984* (the Act), and aims at improving Torres Strait Islander and Aboriginal people's access to opportunities to improve long-term interests, as well as regional economic development and livelihood by creating more secure access rights and a mechanism for further re-allocation. As a result of Australian Government funded voluntary buyouts of TRL fishing licences since 2007, the Management Plan can immediately deliver the majority share of the TRL quota allocation to traditional inhabitants.

Confirming majority commercial access to the fishery by traditional inhabitants enhances the opportunity for traditional Torres Strait Islander and Aboriginal people in the region to take a primary interest in the guardianship and use of fisheries resources for the betterment of customary, social and economic development needs.

The Management Plan is consistent with the native title determination in the *Akiba* case which covers over 44,000 square kilometres of sea country including in the Protected Zone.¹ This Management Plan, through the regulation of commercial fishing, seeks to avoid or otherwise minimise the direct and indirect effects of the Management Plan on the exercise and enjoyment of native title rights and interests, in particular the non-exclusive right of native title holders to access and to take TRL.

Making of the Management Plan

The Management Plan is the first plan of management made in respect of commercial fishing for TRL in the area of the Torres Strait.

Subsection 15A(1) of the Act provides that the Minister may, by legislative instrument, determine a plan of management for a fishery in an area of Australian jurisdiction. Subsection 35(1) of the Act provides for the PZJA to exercise the powers of the Minister under subsection 15A(1) of the Act in respect of a 'Protected Zone Joint Authority fishery'.

¹ *Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v State of Queensland (No. 2)* [2010] FCA 643.

Subsection 28(1) of the Act provides that a ‘Protected Zone Joint Authority fishery’ is a fishery in respect of which an arrangement under Part V of the Act is in place. The *Arrangement between the Commonwealth and the State of Queensland under section 31 of the Torres Strait Fisheries Act 1984* (the Arrangement), made under Part V of the Act, provides that the PZJA is to have management of commercial fisheries in the areas described in subsection 4(2) of the Arrangement. The TRL fishery, described in item 9 of Schedule 2 to the *Torres Strait Fisheries Regulations 1985* (the Regulations), is within the area described in subsection 4(2) of the Arrangement. It follows that commercial fishing for TRL in the area of the fishery is a ‘Protected Zone Joint Authority fishery’ for the purpose of subsection 28(1) of the Act and that, by way of subsection 35(1) of the Act, the PZJA can exercise the power of the Minister under subsection 15A(1) of the Act in relation to the fishery.

The PZJA is established under section 30 of the Act and consists of the Minister administering the Act, the Queensland Minister administering the laws of Queensland relating to marine fishing in the Protected Zone, currently the Queensland Minister for Agricultural Industry Development and Fisheries, and the Chairperson of the Torres Strait Regional Authority (TSRA), which is the Commonwealth agency established under the *Aboriginal and Torres Strait Islander Act 2005* that represents the interests of Torres Strait Islanders. The PZJA is responsible for management of commercial fishing in the Australian area of the Torres Strait Protected Zone (TSPZ) and designated adjacent Torres Strait waters.

The PZJA is responsible for monitoring the condition of the designated fisheries and for the formulation of policies and plans for their management through support from four government agencies - the Australian Fisheries Management Authority (AFMA), the Commonwealth Department of Agriculture and Water Resources, the Queensland Department of Agriculture and Fisheries and the TSRA.

In exercising its functions, the PZJA has regard to the rights and obligations conferred on Australia by the *Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as the Torres Strait, and related matters* (the Torres Strait Treaty), in particular the protection of the traditional way of life and livelihood of the traditional inhabitants, including the capacity to engage in traditional fishing.² The Act provides for fisheries in the area of the Torres Strait to be managed under either the laws of the Commonwealth or Queensland. In October 1996, the PZJA agreed that all commercial fishing activity in the Torres Strait would be managed under the laws of the Commonwealth.

The Management Plan is a legislative instrument for the purpose of the *Legislation Act 2003* (the Legislation Act) and is:

- not subject to disallowance by way of parliamentary scrutiny, by application of subsection 44(1) of the Legislation Act, as the PZJA in making this instrument is an intergovernmental body involving Commonwealth and the State of Queensland; and
- not subject to sunseting by application of subsection 54(1) and paragraph 54(2)(b) of the Legislation Act, read together with item 63AB of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The Fishery

² The Torres Strait Treaty is included in Schedule 2 to the Act.

The TRL fishery is a highly valuable commercial fishery in the Torres Strait and holds very important significance to many Torres Strait Islanders.

TRL are taken either by hand or a short hand spear by divers working from small boats. The majority of divers free dive the shallow reef tops, whereas others use hookah (which involves surface supplied air) to dive the areas of the TRL fishery. Generally, fishing occurs during neap tides where the tidal flow is generally weaker and water visibility is clear.

Regulation of the TRL Fishery

The TRL fishery is currently regulated through the Act, the Regulations and the *Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018* (the Instrument) as well as through the imposition of conditions on licences under section 22 of the Act.

Since 2006 and in preparation for implementing a plan of management, including the prescription of a formal total allowable catch (TAC) for each fishing season, a recommended biological catch (RBC) has been advised for each fishing season by the Protected Zone Joint Authority Tropical Rock Lobster Resource Assessment Group and more recently the Tropical Rock Lobster Working Group. That RBC is then agreed between Australian and Papua New Guinea under the *Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as the Torres Strait, and related matters* that was signed at Sydney on 18 December 1978 (the Torres Strait Treaty), which is outlined in Schedule 1 of the Act. The RBC covers the Torres Strait Protected Zone and is apportioned between Australia and Papua New Guinea through application of article 23 of the Torres Strait Treaty. Australia's apportionment of the RBC is then considered by AFMA, as delegate of the PZJA, to be the informal TAC for the TRL fishery for the given fishing season. This process will be replicated as part of the Management Plan.

This has meant that the TRL fishery has previously been regulated by way of a range of input controls, including seasonal closures, moon-tide hookah closures, gear restrictions and one output control, minimum size limits. The Management Plan will incorporate output controls establishing a quota system by which:

- individual licence holders within a restricted entry pool (known as the Transferrable Vessel Holding or TVH sector) will be allocated individual quota units; and
- traditional inhabitant fishers not operating in the TVH sector will be allocated a pool of quota, held by the TSRA on their behalf. In effect, this will mean that traditional inhabitant fishers will be able to take a defined portion of the TRL fishery, without having to compete with the TVH sector.

The input controls implemented by the Instrument, apart from moon-tide hookah closures, will remain in place after the allocation of quota under the Management Plan. Appropriate amendments to the Instrument are being prepared in concert with the Management Plan (see the *Torres Strait Fisheries Amendment (Tropical Rock Lobster) Management Instrument 2018* (the Amendment Instrument)).

Developing a framework to mitigate potential threats of overfishing and to preserve the marine environment in accordance with reasonable community expectations is a key challenge facing fisheries management, including those fisheries managed by the PZJA.

Excess fishing capacity has been recognised as a major impediment to achieving sound fisheries management outcomes and has generally arisen through the lack of effective access rights. In the absence of secure and

transferable access rights there are few safeguards against overcapitalisation and few market-based incentives for operators to conserve resources for the long-term.

Details of the Management Plan

The Management Plan is made in five Parts, each concerning:

- introductory and preliminary matters including relevant definitions and the objectives of the Management Plan (which are required to be included by operation of subsection 15A(2) of the Act);
- requirements for fishing in the TRL Fishery once the allocation of quota units under Part 3 is settled. This includes a requirement for a person to hold unused quota units to take any TRL in the TRL Fishery within a fishing season (unless in the pool of quota allocated to the traditional inhabitant sector) and the process by which an annual TAC for the TRL Fishery will be determined;
- the process for allocating quota units to certain licence holders in the TRL Fishery and to the TSRA on behalf of the traditional inhabitant sector, as well as containing a requirement for the PZJA to review the allocation of quota units to the traditional inhabitant sector;
- the administration of quota units, including the establishment of a register of quota units, provisions governing the temporary and permanent transfer of quota units between people, circumstances in which quota units will be suspended or cancelled; and
- transitional provisions.

Each section of the Management Plan is outlined in further detail at **Attachment A** below.

Commencement

The Management Plan will commence on the day after registration (see section 2 of the Management Plan).

Consultation

The PZJA has had a long-standing intention to introduce a management plan for the fishery, first issuing an investment warning for the fishery in February 2002. At its 18th meeting on 5-6 July 2005, the PZJA agreed to implement a quota management system in the fishery. Since that time, the ongoing consultation in preparation for the Management Plan has included:

- notification to individual TVH licence holders in January 2007 regarding verification of logbook records to develop and implement a quota management system and the allocation of quota units;
- in June 2007, notification to individual TVH licence holders from the QLD Government's Department of Agriculture and Fisheries on behalf of the PZJA regarding provisional Individual Transferable Quota (ITQ) allocations according to the recommended formula from the Allocation Advisory Panel (AAP), noting that allocations would be formally made under a management plan;
- notification to TVH licence holders of amended provisional allocations in October 2007 using the recommended formula by the AAP;

- discussion of the Management Plan at the PZJA stakeholder forum held on Thursday Island on 30 April 2008;
- conducting community meeting on Torres Strait islands to discuss the management plan during 2014 and 2015; and
- a draft of the Management Plan was released on the PZJA website in late 2014.

These actions culminated in an exposure draft of the Management Plan being released for public comment in 2016 (the 2016 Exposure Draft). An extensive consultation process was conducted by AFMA and the TSRA on the 2016 Exposure Draft from June to October 2016. To support the release of the exposure draft AFMA had, on behalf of the PZJA:

- notified licence holders (Tradition Inhabitant (TIB) and TVH sectors) of the request for public comment;
- conducted community meetings on Torres Strait Islands during August and September 2016;
- notified the Kaurareg Native Title Aboriginal Corporation (RNTBC), the Cape York Land Council and Malu Lamar (Torres Strait Islander) Corporation RNTBC regarding the public comment period; and
- invited the chairperson of Malu Lamar RNTBC to attend the community meetings.

In addition to verbal comments received during the community meetings and PZJA forums, AFMA received written comment from individual licence holders, Malu Lamar RNTBC, the Native Title Office within the TSRA and the Torres Strait Fishers Association.

Despite there being initial expressions of support from stakeholder groups for the PZJA to implement a management plan for the TRL fishery, it became evident through the written submissions of Malu Lamar RNTBC and the Torres Strait Fishers Association, as well as other verbal feedback received through the Tropical Rock Lobster Working Group, that communities and the TIB sector did not support the management plan at that time. As a result, further progression to implement the Management Plan was placed on hold.

Due to ecological conditions, the RBC for the 2017-18 fishing season in the TRL fishery was very low compared with previous fishing seasons. The benefits of the quota system that is implemented through the Management Plan become more readily apparent when a low RBC is in place. This is because individual fishers can manage the taking of their portion of a TAC over the course of a fishing season, rather than having to compete with other fishers. The PZJA implemented appropriate measures, including the making of the Instrument, to give effect to the low RBC and, as a result, the TRL Fishery was closed to all commercial fishing on 30 July 2018. In previous years, the fishing season for the TRL Fishery had remained open until 30 September. The early closure of the TRL Fishery for the 2017-18 fishing season meant that the potential benefits of a Management Plan were recognised and support from the traditional inhabitant sector increased.

It follows that, in late 2018:

- all feedback and submissions obtained on the 2016 Exposure Draft were considered and where appropriate incorporated into the Management Plan;

- the TSRA obtained additional advice on the 2016 Exposure Draft from an independent contractor;³
- the TSRA sought support from the wider Torres Strait islander fishing community at the Torres Strait Fisheries Summit held by the TSRA in August 2018;
- the PZJA reaffirmed its commitment in October 2018⁴ to implementing a quota management system in the fishery for the 2018/19 fishing season; and
- an Exposure Draft was released on the PZJA website in November 2018.

Native Title

The making of the Management Plan by the PZJA is a future act for the purposes of the *Native Title Act 1993* (the Native Title Act). Section 24HA of the Native Title Act relevantly provides that the making of legislation in relation to the management or regulation of living aquatic resources is a valid future act, insofar as the Management Plan is validly made. In this regard, it is noted that:

- there are no conditions that need to be met under the Act prior to making the Management Plan under section 15A of the Act. As outlined above, relevant native title bodies were consulted prior to the making of the Management Plan and their responses have been considered and where considered appropriate, incorporated into the Management Plan.

Compliance with Part 10 of the EPBC Act

Section 148(2) of the *Environmental Protection and Biodiversity Conservation Act 1999* (the EPBC Act) provides that:

Before a Minister administering [the Act] determines a plan of management for a fishery under section 15A of that Act, he or she must:

- (a) make an agreement under section 146 [of the EPBC Act] with the Minister (the **Environment Minister**) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3 [of the EPBC Act]; and*
- (b) consider any recommendations made by the Environment Minister under the agreement.*

A delegate of the Environment Minister, provided formal correspondence on 22 November 2018 that no modifications were necessary and endorsed the proposed Management Plan.

It follows that the requirements under Part 10 of the *Environmental Protection and Biodiversity Conservation Act 1999* (the EPBC Act) have been met prior to making of the Management Plan.

Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

³ This report was provided by Terra Moana, a New Zealand based consultancy firm with experience in advising on involvement in commercial fisheries by traditional inhabitants.

⁴ See <https://www.pzja.gov.au/news-media/media-releases/torres-strait-tropical-rock-lobster-fishery-management-plan-be-place-1>

As the Management Plan is exempt from disallowance through the process of parliamentary scrutiny, by application of subsection 44(1) of the Legislation Act, a statement of compatibility with human rights does not have to be prepared for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the Management Plan are set out in **Attachment A**.

ATTACHMENT A

Details on provisions

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

Part 1—Introduction

Division 1—Preliminary

Section 1 Name

Provides that the name of the Management Plan is the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.

Section 2 Commencement

Provides that the Management Plan will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

Provides that the Management Plan is made under section 15A of the Act, noting that the PZJA has capacity to make the Management Plan by operation of paragraph 35(1)(a) of the Act. This is because the TRL fishery (as defined by the Management Plan) is a ‘Protected Zone Joint Authority fishery’ within the meaning given by subsection 28(1) of the Act.

Division 2—Definitions

Section 4 Definitions

Provides for relevant definitions in the Management Plan, including:

AAT is the Administrative Appeals Tribunal, which is defined for the purpose of section 21 of the Management Plan.

Act provides that references to the Act in the Management Plan are references to the *Torres Strait Fisheries Act 1984*.

allocation day is the day from which the Minister’s obligation to allocate quota units under section 15 accrues. The allocation day occurs in 2 instances.

Firstly, where an application to the Administrative Appeals Tribunal to review the Minister’s decision to provisionally allocate quota under section 20 is not made by any of the persons holding a primary boat licence or tender boat licence, the allocation day then occurs on the day after the day in which such an application for review expires. Under subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, the time limit is 28 days after the day on which a notice of decision is given to the applicant. It follows that the allocation day would occur, if no application to the Administrative Appeals Tribunal is made, on the 28th day after the decision on provisional allocation by the Minister is given to the relevant licence holder under section 20 of the Management Plan.

Secondly, where an application for Administrative Appeals Tribunal review is made, the allocation day occurs on the day after the day on which all reviews (including review by the Federal Court of Australia) are finally disposed of. This encompasses potential appeals from a decision of the Administrative Appeals Tribunal on a question of law to the Federal Court of Australia.

approved form means a form approved by the Minister under section 29 for the purpose of particular provisions of the Management Plan. The Minister will approve forms for the purpose of a permanent transfer of quota units (under subsection 24(2) of the Management Plan) as well as the temporary transfer of quota units (subsection 25(1)) which will be permitted after the allocation of quota units under section 15.

Authority means the PZJA established by section 30 of the Act.

catch history notice means a notice issued under subsection 18(2). See description at section 18 below for further detail.

fishing season means the period in which a person who holds a TRL fishing licence is permitted to take, process or carry TRL, with reference to the period prescribed in the Instrument. As of the date of commencement of the Management Plan, the Instrument currently prescribes the fishing season to be from 1 December in any given year until 30 September in the following year.

It is noted that, as the Instrument is a legislative instrument, subparagraph 14(1)(a)(ii) of the Legislation Act permits making reference to that instrument as in force from time to time.

objection period means the period in which a primary boat licence holder or a tender boat licence holder may object to a catch history notice issued by the Minister under subsection 18(2) of the Management Plan.

PPSA security interest has the meaning given by the *Personal Property Securities Act 2009* (PPS Act). As rights to access the TRL fishery are being created through the allocation of quota by the Management Plan, it is appropriate to consider the priorities between the Register created by the Management Plan for the purpose of section 10 of the Act (see Division 1 of Part 4 of the Management Plan) and the Personal Property Securities Register created under the PPS Act. These priorities are established by section 27 of the Management Plan.

primary boat licence means a commercial fishing licence (within the meaning given in subsection 3(1) of the Act) that authorises the use of an Australian boat for taking TRL in the TRL fishery (paragraph (a)), is not a commercial fishing licence that is described as a Torres Strait traditional inhabitant fishing boat licence (paragraph (b)) and is not a tender boat licence as defined elsewhere in section 4 (paragraph (c)).

This definition is intended to cover boats known as primary boats operating in the TVH sector, as opposed to boats operated by traditional inhabitants of the Torres Strait in the TIB sector. These separate sectors have been established in the TRL fishery on a policy basis since before the catch verification period (the five years between 1997 and 2001, as outlined in subsection 18(4) of the Management Plan). There are two types of licences that have been issued to the TVH sector in the TRL fishery, a primary boat licence and a tender boat licence. The PZJA maintains a limited entry policy for these licences, meaning that no new primary boat licences or tender boat licences will be granted. As of the date of commencement of the Management Plan, there are 12 primary boat licences that are currently granted for the TRL fishery.

Paragraph (a) is intended to exclude Papua New Guinea boats that may also hold a 'commercial fishing licence' under subsection 19(3) of the Act.

Paragraph (b) is intended to exclude licences issued to traditional inhabitants in the traditional inhabitant sector. Licences issued for the traditional inhabitant sector are given the title ‘Torres Strait traditional inhabitant fishing boat licence’ meaning that, by excluding these licences from the definition of primary boat licence, any licences issued to the traditional inhabitant sector are also excluded.

Paragraph (c) is intended to exclude tender boat licences, another type of licence issued exclusively to the TVH sector on a limited entry basis, from being captured within the definition of primary boat licence.

principal holder means the person who owns a primary boat licence or a tender boat licence. The person who is the principal holder on the snapshot day is the person entitled to be granted quota under section 15 of the Management Plan. Ownership of a primary boat licence or a tender boat licence is established in the following three ways:

- the person was originally granted the licence(s) under section 19 of the Act (paragraph (a));
- the person has been permanently transferred the licence(s) from a person who was either granted or was a recipient of a permanent transfer of the licence(s), under section 25 of the Act (paragraph (b)); or
- the person, who meets the requirements of either paragraphs (a) or (b), has temporarily transferred the licence(s) to another person under section 25 of the Act (paragraph (c)).

The distinction between paragraphs (b) and (c) of this definition is required because there is a single mechanism under the Act (section 25) that permits the transfer of a licence. When licences are sold by one person to another, a licence is transferred on a permanent basis under subsection 25(1) of the Act. It is also common practice in the TRL fishery, however, for licences to be leased from one person to another for a particular fishing season. This is captured by a temporary transfer of the licence by way of subsection 25(1A) of the Act.

For the purposes of this definition, it is also noted that a principal holder for the purpose of this definition may be a company, through application of subsection 2C(1) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act) by way of paragraph 13(1)(a) of the Legislation Act.

provisional boat catch history means the catch history attributed to a particular primary boat licence in accordance with subsection 18(4) of the Management Plan.

provisional total catch history means the sum of all of the provisional boat catch histories that are attributed to the 12 primary boat licences that are in force on the snapshot day.

quota unit means a unit of fishing capacity, as that expression is used in section 15A of the Act, that will be issued under section 15 of the Management Plan for the TRL fishery. The use of quota units under the Management Plan is intended to be interchangeable with the use of units of fishing capacity, for which a plan of management may provide for the determination of under paragraph 15A(4)(a) of the Act.

Register means the Register of Quota Units for the TRL fishery that will be established, under section 10 of the Act, once quota units are allocated in the TRL fishery under section 15 of the Management Plan.

snapshot day means that day after the end of the period of 60 days beginning on the day the Management Plan commences. A person who holds a primary boat licence or a tender boat licence on this day will be entitled to the allocation of quota units under paragraph 15(1)(b) of the Management Plan. A period of 60 days is given from the commencement of the Management Plan in order to give operators within, or seeking to operate within,

the TVH sector an appropriate opportunity to finalise any pending transactions of primary boat licences or tender boat licences prior to the ascription of the right to be allocated quota under the Management Plan.

temporary transfer is intended to capture the leasing of unused quota units between people for a particular fishing season, and aligns with the language concerning the temporary transfer of TRL fishing licences under subsection 25(1A) of Act. Only unused quota units, which only accrue for a particular fishing season (see discussion concerning section 5) once a TAC has been determined under section 13, can be temporarily transferred (i.e. leased).

tender boat licence means a commercial fishing licence issued for a small boat, commonly described as a tender, to the TVH sector under the PZJA's limited entry policy. Each tender boat licence is attributed to a primary boat licence in a primary-tender licence package (see explanation in relation to the definition of primary boat licence above).

total allowable catch means the total weight of TRL that can be taken from the TRL fishery within a particular fishing season. This total weight is determined by the Minister under subsection 13(1) of the Management Plan prior to the commencement of a fishing season (unless subsection 30(2) of the Management Plan applies).

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

For this sector, as opposed to the TVH sector, the PZJA applies an open access policy meaning that any person who meets the definition of 'traditional inhabitant' under the Torres Strait Treaty is able to be granted a licence to fish in the TRL fishery upon payment of a nominal fee.

traditional inhabitant TRL fishing licence refers to a TRL fishing licence that can only be granted to a traditional inhabitant. Persons fishing in the TVH sector are excluded from this category.

TRL fishery means the geographic 'area of the tropical rock lobster fishery' as prescribed in item 9 of schedule 2 to the Regulations.

TRL fishing licence means either a commercial fishing licence that authorises the use of an Australian boat for taking TRL in the TRL fishery, or a licence granted under 19(4A) of the Act that authorises the taking of TRL in the TRL fishery without the use of the boat. Although there are currently no licences granted under subsection 19(4A) of the Act, this definition will cover any future scenarios in which such licences are granted.

tropical rock lobster means fish of the species *Panulirus* spp. These are the target species for which the quota system implemented by the Management Plan will regulate.

TSRA means the Torres Strait Regional Authority. The TSRA is an Australian Government Statutory Authority established under section 142 of the *Aboriginal and Torres Strait Islander Act 2005* on 1 July 1994.

TVH sector (short for transferrable vessel holding sector) means the group of people who fish commercially for TRL in the TRL fishery under primary boat licences or tender boat licences. They do not include the traditional inhabitant sector.

unused quota units makes reference to section 5 (outlined below).

Section 5 **Meaning of unused quota units**

This provision clarifies that unused quota units only exist in relation to a particular fishing season. This is because unused quota units only arise for a particular fishing season after the Minister has determined a TAC for a fishing season.

Unused quota units can be temporarily transferred (i.e. leased) under section 25 of the Management Plan and can also be permanently transferred (i.e. sold) under section 24 of the Management Plan. The weight of TRL that can be taken for each unused quota unit is determined separately for each fishing season, through determination of a TAC (under section 13) and application of section 12.

Division 3—Objectives of Management Plan

Section 6 Objectives

Section 6 provides the objectives of the Management Plan are the same as those set out in paragraphs 8(a) to (g) of the Act, which complies with subsection 15A(2A) of the Act.

Section 7 Assessing objectives

Section 7 provides that the measures by which the objectives of the Management Plan will be attained, the performance criteria against which measures will be assessed and the timeframes within which measures are to be assessed against the performance criteria.

There are three key measures by which the Management Plan will be assessed:

- determining the TAC for each fishing season (item 1 of the Table);
- implementing the quota unit system for each fishing season (item 2); and
- allocating quota units to the traditional inhabitant sector (item 3).

Part 2—Fishing in the TRL fishery

Division 1—Taking tropical rock lobster

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

For a person to take TRL in the TRL fishery under section 8 of the Management Plan, the person must meet the requirements of either subsection 8(1) or 8(2).

Subsection 8(1) is intended to cover the TVH sector as well as any persons in the traditional inhabitant sector who may, at some point in the future, purchase, lease or be allocated quota units that are held on an individual basis. Under subsection 8(1), a person may take tropical lobster in the TRL fishery when, at the time that the TRL are taken:

- the person holds a TRL fishing licence (which is defined in section 4 of the Management Plan so as to include a primary boat licence, a tender boat licence as well as a licence issued under subsections 19(2) and 19(4A) of the Act to a traditional inhabitant) (paragraph (a)); and
- the person holds unused quota units (within the meaning prescribed in section 5) for the current fishing season (paragraph (b)).

Subsection 8(2) is intended to cover the traditional inhabitant sector operating under the TSRA pool of quota that will be allocated by way of paragraph 15(1)(a) of the Management Plan. Under subsection (2), a person may take TRL in the TRL fishery when, at the time that the TRL are taken:

- the person is a traditional inhabitant;
- the person holds a traditional inhabitant TRL fishing licence (being a licence issued under section 19 of the Act that is a type that, under the PZJA's licencing policy, can only be issued to a traditional inhabitant of the Torres Strait) (paragraph (a)); and
- a notice issued under section 11 of the Management Plan is not in force in relation to the current fishing season. A notice will be issued by the Minister under section 11 when the reported catch from the traditional inhabitant sector reaches the amount of TRL that can be taken under their quota pool for a particular season (see further below) (paragraph (b)).

Section 8 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan). For example, if the allocation day occurs on 19 September 2019, section 8 will only apply from the opening of the 2019/20 fishing season on 1 December 2019.

Section 9 Quantity of tropical rock lobster that may be taken by persons holding unused quota units

This section provides the formula for determining the quantity of TRL that may be taken by a person holding unused quota units. The formula can be applied at any point in time during the fishing season, and captures any unused quota units that have been leased or quota units that have been purchased during the fishing season.

The formula must be read in accordance with the terms 'amount of processed tropical rock lobster taken', 'amount of unprocessed tropical rock lobster taken', 'conversion factor', 'total number of unused quota units', and 'value of a quota unit' which are defined:

amount of processed tropical rock lobster taken means the amount by weight of TRL that has been taken by an individual quota holder within a particular fishing season which has been processed by removal of the tail from the remainder of the fish. TRL are primarily taken and landed live, as a higher price is paid, but in some instances TRL are landed processed. In this instance, TRL tails are removed from the body and only the tail is retained by fishers.

amount of unprocessed tropical rock lobster taken means the amount by weight of TRL that has been taken by an individual quota holder.

conversion factor means the number by which processed TRL is multiplied to represent the whole weight of that TRL. This figure is determined in section 10 of the Management Plan (see further below).

total number of unused quota units means the total number of unused quota units held at the start of a fishing season (i.e. 1 December in any given year), plus the number of unused quota units received from another person and minus the number of unused quota units transferred to another person.

This definition accounts for the temporary transfer (i.e. lease) and permanent transfer (i.e. sale) of unused quota units within a fishing season. The permanent transfer of quota units, which have already been used for a fishing season, is not captured within this term.

value of a quota unit refers to the weight of TRL that can be taken for each quota unit that a person holds, as applies for each fishing season after the TAC is determined (see sections 12 and 13). This captures the amount by weight of TRL that can be taken by an individual quota holder at the commencement of any fishing season.

Section 9 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan).

Section 10 Weight conversion of processed tropical rock lobster

The TAC of TRL, to be determined under section 13 of the Management Plan, is the weight of whole TRL that can be taken from the TRL fishery for a particular fishing season.

The majority of TRL are taken live, which means that the reported weight of TRL obtained by AFMA through logbooks (which are required to be completed by the TVH sector) or by records received through licenced fish receivers (who receive TRL from the TVH and the traditional inhabitant sector, as licenced). However, during the harvesting process some TRL may be processed by removing the tail from the body and only retaining the tail. The conversion factor allows processed product to be converted to whole weight.

Section 10 prescribes the relevant conversion factor as 2.677. For example, if 1 kilogram of processed TRL is landed and reported by a fish receiver who holds quota units on an individual basis, then 2.677 kilograms is deducted from the amount of TRL that the fisher has available to take under his or her unused quota for the remainder of the fishing season.

Section 10 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan).

Section 11 Notice when quota for traditional inhabitant sector reached

Section 11 provides that the Minister must issue a notice under subsection (3) when the total amount of TRL taken by licensed traditional inhabitants in the TRL fishery reaches the amount that is allowed to be taken based on the unused quota units for the fishing season that the TSRA holds. If such a notice is in force, a traditional inhabitant may not take TRL from the TRL fishery in accordance with subsection 8(2) of the Management Plan (however, they are not precluded from taking TRL from the TRL fishery if they meet the requirements of subsection 8(1)).

Unused quota units held by the TSRA for the purpose of section 11 are not restricted to being quota units that the TSRA will hold on behalf of traditional inhabitants by virtue of paragraph 15(1)(a) of the Management Plan. It is anticipated that, if it chooses to do so, the TSRA may lease or purchase quota units from individual quota unit holders in furtherance of the 100 per cent traditional ownership goals for the fishery. If the total amount of TRL that will be taken by traditional inhabitants during the course of a particular fishing season will not amount to the amount that is allowed to be taken, the TSRA may choose to lease unused quota units to licence holders in the TVH sector (noting that the TSRA cannot permanently transfer quota units, see section 24 of the Management Plan).

Section 11 is drafted with the intent that both the purchase or lease of additional quota units, or the leasing out of unused quota units, would be captured within the amount of TRL allowed to be taken by traditional inhabitants prior to the Minister being required to issue a notice under this section.

Prescribed requirements for the notice include that the notice:

- contains statements that the quota for the traditional inhabitant sector has been reached for the fishing season and that traditional inhabitants can no longer fish under subsection 8(2) for that season (subsection (3)); and
- be in writing, dated, given to the TSRA and each traditional inhabitant who holds a traditional inhabitant TRL fishing licence, and published on the PZJA’s website (www.pzja.gov.au) (subsection (4)).

Subsection (5) clarifies that a notice issued by the Minister under section 11 is only in force from the day it is issued until the end of the particular fishing season for which the notice is issued, noting that the notice may be varied or revoked through application of subsection 33(3) of the Acts Interpretation Act. For example, the Minister may vary or revoke a notice issued under section 11 where the TSRA leases additional unused quota units from an individual quota unit holder after a notice has already been issued. This lease would mean that the pool of unused quota units would be raised and traditional inhabitants would again be able to take TRL.

Section 11 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan).

Division 2—Value of quota units

Section 12 Value of quota units

Section 12 provides the formula for calculating the value of a quota unit for a fishing season expressed in kilograms. The value can be worked out by taking the total allowable catch and dividing it by the total number of quota units. The ‘total allowable catch’ and ‘total number of quota units’ are defined terms for the purposes of the formula:

total allowable catch means the amount of TRL that can be taken from the TRL fishery for a particular fishing season, as determined by the Minister under subsection 13(1) of the Management Plan.

total number of quota units means the total number of quota units for the fishing season. At the start of the first fishing season after the allocation day, this will be 1,000,000 units pursuant to subsection 15(1) of the Management Plan. The number of quota units may be different in subsequent fishing seasons due to the cancellation of quota units (see subsections 28(5) and 28(6)), or amendment of the Management Plan from time to time.

Section 12 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan).

Division 3—Total allowable catch

Section 13 Determining the total allowable catch for a fishing season

This section provides that the Minister must determine the TAC before the start of the fishing season. The TAC represents the amount of TRL, in kilograms, that can be taken within a particular fishing season

The Minister will only determine a TAC after:

- considering with the relevant advisory committee(s); and

- having regard to Australia’s obligations under the Torres Strait Treaty. In particular, article 23 of the Torres Strait Treaty provides for the allocation of catch between Australia and PNG (as outlined above). The TAC will be consistent with the amount of TRL that can be taken by Australian boats within the area of Australian jurisdiction under paragraph 23(4)(a) of the Torres Strait Treaty.

Subsection 13(3) provides for other matters that the Minister may take into account in determining the TAC under subsection 13(1). This does not, however, limit the factors that may be taken into account by the Minister when determining the TAC. In particular, a Harvest Strategy for the TRL fishery is under development. A Harvest Strategy sets out to meet fishery objectives and manage fish stocks for long-term biological sustainability and to maximise the net economic returns from the fishery. This will be a key consideration for the Minister in any future determination of a TAC under section 13 of the Management Plan.

Once the Harvest Strategy is finalised, it will be available on the PZJA website (www.pzja.gov.au).

Section 14 Increasing the total allowable catch for a fishing season

Section 14 provides for the Minister to increase the TAC for a fishing season.

For instance, this may occur when Australia and Papua New Guinea make an agreement under article 25 of the Torres Strait Treaty that no cross-endorsement (i.e. endorsement of Papua New Guinea vessels to fish in areas of Australian jurisdiction) will occur for a particular fishing season.

Section 14 only applies on or after the first day of the fishing season that starts after the allocation day has occurred (through application of subsection 30(1) of the Management Plan).

Part 3—Allocation of quota units

Division 1—Allocation of quota units for the TRL fishery

Section 15 Allocation of quota units—traditional inhabitant sector and TVH Sector

Subsection (1) provides that the Minister must, on a day that is within the 60 day period beginning on the allocation day, allocate 562,000 units to the TSRA to be held for the benefit of the traditional inhabitant sector (paragraph (a)), and 438,000 units to the TVH sector (paragraph (b)). The allocation by the Minister under subsection (b) is on an individual basis in line with the provisional allocation (see section 20) and any subsequent merits review or legal appeal.

This reflects a sectoral allocation of 56.2% to the traditional inhabitant sector and 43.8% to the TVH sector, within an individual percentage allocated to each operator within that sector.

Under subsection (2), the allocation will occur when the Minister makes an entry on the Register, established under section 10 of the Act, that a person holds a number of quota units. After the allocation has occurred the Minister must notify each person to whom quota is allocated as prescribed in subsection (3).

Section 16 Basis on which quota units are allocated

This section provides the basis on which quota units are allocated, including that quota units may be suspended or cancelled under section 28 of the Management Plan (as in force at the time of commencement, paragraph (a)) or through amendment of the Management Plan from time to time (paragraph (b)).

The result is that, at the time that the Management Plan is made, any quota units that are held after the allocation day can only be suspended or cancelled by the PZJA in accordance with section 28 of the Management Plan or suspended, cancelled, revoked, terminated or varied by or under later legislation. Where subsequent amendment of the Management Plan occurs with the effect that quota units are revoked etc. no compensation is payable (paragraph (c)).

Division 2—Allocation to the traditional inhabitant sector

Section 17 Review of allocation

This section obliges the PZJA to review the allocation of quota units to the traditional inhabitant sector after a period of two years (subsection (1)). Subsection (2) provides that, in conducting its review, the PZJA may consider allocating quota units to a non-government legal entity that represents traditional inhabitants; allocating quota units to individual traditional inhabitants directly, or a combination of the options.

This requirement to review the allocation of quota units to the traditional sector, and in turn make amendments to the Management Plan, allows for the development of policy by the TSRA to progress a Fisheries Regional Ownership Framework aiming to enhance traditional ownership rights of fisheries assets for traditional inhabitants of the Torres Strait. Once finalised, that policy will be taken into account by the PZJA when conducting their review under this section.

Division 3—Allocation to the TVH sector

Subdivision A—Verification of catch histories and tender boat licences

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

Subsection (1) outlines the persons to whom a catch history notice (under subsection (2)) must be provided. Persons captured by subsection (1) are also the persons who are entitled to a provisional allocation of quota units (under section 20) and to be granted quota units, held on an individual basis, under paragraph 15(1)(b).

Subsection (1) applies to a person who, on the snapshot day, owns one or more primary boat licences or one or more primary boat licences and tender boat licences. The snapshot day occurs 60 days after the commencement of the Management Plan to allow for any pending transfers of such licences to be finalised prior to the rights under subsection 18(2), section 20 and paragraph 15(1)(b) accruing.

Subsection (2) provides that, within 60 days of the snapshot day, the Minister must give to each person captured by subsection 18(1) a catch history notice setting out:

- the provisional boat catch history for each primary boat licence for which the person is a principal holder;
- the provisional total catch history; and
- if the person is the principal holder of one or more tender boat licences on the snapshot day.

The provisional boat catch history is calculated according to the formula provided in the method statement set out in subsection (4). The catch verification period is the calendar years between 1997 and 2001. This period was chosen on the basis that the catch verification process conducted in 2007, in accordance with the catch

verification policy referred to in subsection (5), would provide relevant guidance to the Minister in making a provisional allocation under section 20 of the Management Plan.

As of the date of commencement of the Management Plan, the catch verification policy is available on the PZJA website.⁵ There will be no amendments to the catch verification policy after the commencement of the Management Plan.

Procedural requirements that must be followed by the Minister in issuing a catch verification notice are set out in subsection (3).

Section 19 Objection to catch histories—requirements for making objection

This section provides that a person may object in writing to their catch history notice under section 18. A person may object to their provisional boat catch history, or the number of tender boat licences for which the person is the principal holder on the snapshot day (subsection (1)).

An objection can be made within 21 days of receiving the catch history notice unless the Minister allows a person further time to object upon application by the person. Any objection must be in writing, set out prescribed grounds and be accompanied by evidence supporting the claim.

If no objections are received within the 21 day objection period, the provisional allocation under section 20 will be made on the basis of the catch verification notices.

Subdivision B—Provisional allocation of quota units

Section 20 Provisional allocation of quota units

Once an objection, or objections, are received by the Minister from primary licence holders under subsection 19(1), or the 21 day period for making objections has expired without receiving an objection, the Minister must:

- determine the final boat catch history for each primary boat licence in force on the snapshot day (paragraph (1)(a));
- determine the number of tender boat licences a person holds on the snapshot day (paragraph (1)(b));
- determine the provisional allocation of quota units under subsection (6) (paragraph (1)(c)); and
- give a notice to each person provisionally allocated quota units in the form prescribed by subsection (7) (paragraph (1)(d)).

The provisional allocation by the Minister under subsection (6) will be done under two separate methods for primary boat licences and tender boat licences.

Primary boat licences

The provisional allocation of quota units to primary boat licence will be for 80% of the quota units to be allocated to the TVH sector (i.e. 80% of 438,000, being 350,400 quota units). Under subsection (4), 350,400 quota units will be provisionally allocated to different primary boat licences proportionally, on the basis of the catch history

⁵ See <http://www.pzja.gov.au>

for each of those licences (as determined in accordance with the method statement at subsection 18(4)) as well as any subsequent objections that have been received and the catch verification policy (subsections (2) and (3)).

The proportion of quota units provisionally allocated to each primary boat licence holder under paragraph (6)(a) will therefore be contingent upon the Minister's determination of each boat's final boat catch history under paragraph (1)(a).

Tender boat licences

The provisional allocation of quota units to tender boat licences is done on the basis of the number of licences only. This will represent the remaining 20% of the 438,000 quota units being allocated to the TVH sector (i.e. 87,600 quota units).

The number of quota units allocated to each tender boat licence holder under will be contingent upon the Minister determining the number of licences in the TRL fishery (paragraph (1)(b)) and the number of tender boat licences for which the person is a primary holder on the snapshot day. Any tender boat licences that are leased by a person on the snapshot day will not be counted towards their allocation under subsection (6).

Subdivision C—AAT review of provisional allocation of quota units

Section 21 Review of provisional allocation of quota units by the AAT

This section provides that, once the Minister has made a provisional allocation of quota under section 20 of the Management Plan, an application may be made to the Administrative Appeals Tribunal for review of the provisional allocation decision by the Minister, as provided for by paragraph 15A(6)(i) of the Act.

Given the potential economic impact of the Minister's decision under section 20, and the lack of alternative review mechanisms under the Act,⁶ this is an important merits review mechanism to include within the Management Plan.

Part 4—Administration of the quota unit system

Division 1—Register of quota units

Section 22 Register—establishment

Section 10 of the Act provides that the Minister must cause registers to be kept at such place or places that the Minister thinks fit (subsection (1)) and that such registers must show particulars of the allocation of units of fishing capacity (i.e. quota units) pursuant to a Management Plan (subsection (2)).

Section 22 of the Management Plan is made for the purpose of section 10 of the Act, and provides that a register must be included for quota units issued for the TRL fishery and that this register must be made available upon request.

⁶ Unlike the *Fisheries Management Act 1991*, which provides for the reconsideration of certain decisions by AFMA (see subsection 165(5) of that Act) as well as subsequent review by the Administrative Appeals Tribunal (see subsection 165(7)). Additionally, with respect to the allocation of statutory fishing rights under subsection 23(1), the *Fisheries Management Act 1991* establishes a specialist Statutory Fishing Rights Allocation Review Panel to review those allocations (see Part 8).

The register will be considered to be prima facie evidence of ownership (or holding under a lease) of quota units in the TRL fishery.

Section 23 Register—required information

This section provides for the type of information that the register must include (subsections (1) and (2)). This information will be collected by AFMA who will administer the register. Any personal information that is collected for this purpose is a collection of information required by law for the purposes of the *Privacy Act 1988*.

Further, subsection (3) provides for the collection of additional information from the transferee if quota units are transferred from one person to another.

Where correction need to be made to the register, for example when there is a mistake in the register, subsection 23(4) allows AFMA to make such corrections.

Division 2—Trading of quota units

Section 24 Application to register transfer a permanent transfer of quota units

This section allows a person upon application to register a permanent transfer of some or all of their held quota units. Any such transfer does not take effect until it is registered on the register under section 26 of the Management Plan. It is noted that the TSRA are unable to permanently transfer quota units under the Management Plan as in force at commencement, but that this may be altered in subsequent amendments to the Management Plan pursuant to the PZJA review conducted under section 17.

Under both sections 24 and 25, quota units cannot be permanently or temporarily transferred to a trust or a trustee of a trust. This is:

- to provide clarity with respect to the application of section 2C of the Acts Interpretation Act;
- to provide clear lines of responsibility for conduct done, in particular fish taken, for the purpose of quota units. This means that the suspension and cancellation powers for quota units in section 28 can be more clearly applied; and
- to align the Management Plan with other Commonwealth fisheries, for which trusts are not registerable by way of section 31H of the *Fisheries Management Act 1991* (the Fisheries Management Act).

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

This section allows a person upon application to register a temporary transfer (often referred to as leasing) of some or all of their held quota units. The temporary transfer has no effect until it is registered.

Section 26 Registration of transfers of quota units and unused quota units

This section provides that AFMA must register a permanent transfer of quota units or a temporary transfer or unused quota units unless the circumstances in subsection 26(2) apply. This reflects the grounds, as outlined in PZJA policy, upon which the PZJA (or its delegate) may elect not to register a transfer of a licence under subsection 25(1) of the Act.

Section 27 Priority between quota unit interests and PPSA security interests

This section defines the priority between security interests as defined by the *Personal Properties Securities Act 2009* (the PPSA) and quota unit interests created under the Management Plan. The effect of this subsection is that the priority is determined in accordance with the Management Plan rather than PPSA. This provision provides clarity in situations where there are competing securities interests on quota units and determines which interest takes priority.

Division 3—Suspension and cancellation of quota units

Section 28 Suspension and cancellation of quota units

Paragraph 15A(6)(g) of the Act provides that *inter alia* the Management Plan may make provision for and in relation to the suspension and cancellation of units of fishing capacity (i.e. quota unit as defined in section 4 of the Management Plan).

This section provides for the suspension of quota units by the Minister 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. The Minister may suspend for a period of one month unless the suspension is revoked earlier. If a person holds quota units and their licence is suspended under subsection 26(1) of the Act, the quota units are suspended under subsection 28(4) of the Management Plan for the period in which the licence is suspended.

Additionally, this section provides for the cancellation of quota units on two grounds:

- where the person who holds the quota units, whether or not those units are held as a result of a temporary transfer, is convicted of an offence against the Act, regulations or against a law of the Commonwealth relating to fishing (such as the Fisheries Management Act), or against a law of Papua New Guinea or of a State or Territory relating to fishing (such as the *Fisheries Act 1994* (Qld), see subsection (5)). This correlates with the power relating to licences under subsection 26(4) of the Act; and
- if 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 is not made within the specified period or the person does not enter into an arrangement to pay satisfactory to the Minister.

There are no review mechanisms prescribed in the Management Plan for decisions under section 28. Akin to the position concerning the review of decisions to suspend or cancel licences under section 26 of the Act, the only review mechanism available for suspension or cancellation of quota units is legal review.

Division 4—Miscellaneous

Section 29 Approved forms

This section provides the Authority with the authority to approve forms for the purposes of the Management Plan. Approved forms are required for the purposes of an application to register the permanent transfer of quota units under subsection 24(2) and an application to register the temporary transfer of unused quota units under subsection 25(1).

Part 5—Application and transitional provisions

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

This section provides that Part 2 of the Management Plan, which prescribes how fishing in the TRL fishery will occur, applies on and from the first day of the fishing season that starts after the allocation of quota units under subsection 15(1) has occurred. Subsection 30(2) provides that for that first fishing season, subsection 13(1) applies as if the Minister must determine the TAC for the fishing season as soon as practicable after the start of the fishing season. This subsection is required in the case that the allocation under subsection 15(1) occurs shortly before the start of the following fishing season (i.e. shortly before 1 December in the relevant year), and the Minister does not have an opportunity to determine the TAC prior to 1 December.

This section provides clarity on the transitional arrangements in the fishery until the allocation of quota units occurs.