

# PART III – Proposed management arrangements for the Torres Strait Prawn Trawl Fishery

## 6 LEGAL FRAMEWORK

### 6.1 The Torres Strait Treaty

The Australian Parliament ratified the Torres Strait Treaty with Papua New Guinea (the Treaty) on 15 February 1985. As stated in the Treaty's preamble, the Treaty is designed to resolve issues of sovereignty and maritime boundaries in the Strait separating the two countries, to recognise and protect the traditional way of life and livelihood of traditional inhabitants, and to protect the Torres Strait marine environment.

The Treaty establishes the Torres Strait Protected Zone (TSPZ). The primary purpose of establishing the TSPZ is:

*'to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement'* (Treaty, Article 10.3).

A further purpose of the TSPZ, that being to protect and preserve the Torres Strait marine environment and indigenous fauna and flora (Treaty, Article 10.4). In fulfilling this obligation, Australia and Papua New Guinea have agreed to use their:

*'best endeavours to minimise any restrictive effects on the traditional activities of the traditional inhabitants'* (Treaty, Article 14.4).

The Treaty recognises each country's sovereign jurisdiction for swimming fish and sedentary species on the respective sides of two agreed jurisdiction lines. These lines are respectively known as the Fisheries Jurisdiction Line (FJL) and the Seabed Jurisdiction Line (SJL) (Fig 1).

The Treaty provides for traditional inhabitant movement from both countries the right of free movement across the Australia/PNG border for 'the performance of lawful traditional activities' (Treaty, Article 11.1). The extent of the free movement provisions is currently restricted to movement within the TSPZ. Traditional inhabitants from the PNG coastal villages can thus engage in traditional activities in the Australian areas of the TSPZ and Australian traditional inhabitants can equally hunt turtle and dugong in PNG waters inside the TSPZ.

Each country has agreed to permit the continued exercise of such traditional rights 'on conditions not less favourable than those applying to like rights of its own traditional inhabitants' (Treaty Article 12).

The Treaty also recognises the importance of traditional fishing to traditional inhabitants in Article 20 by stating that priority should be given to traditional fishing over commercial fisheries within the Protected Zone and that any conservation measures adopted to manage such fisheries should not restrict traditional fishing activities.

The Treaty also expresses Australia and PNG's common desire to co-operate in the conservation, management and sharing of fisheries resources in the TSPZ. Given the straddling and in some cases migratory nature of the Torres Strait's marine resources, such cooperation is essential if the countries are to achieve their stated goal of protecting the Torres Strait marine environment – and in turn protecting and preserving the traditional way of life that is dependent on the health of the marine environment.



Reflecting the commitment to work cooperatively together, the two countries have developed subsidiary conservation and management arrangements for a number of Torres Strait fisheries, including prawn.

### **6.1.1 Catch sharing with PNG**

Under the *Torres Strait Treaty 1985*, Papua New Guinea is entitled to a 25 per cent share of all fishery resources located within Australian fisheries jurisdictional waters within the Protected Zone, south of the fisheries jurisdiction line. It also entitles Australia to a 25 per cent share of fishery resources in PNG's fisheries jurisdictional waters within the zone. This recognition is implemented through the catch sharing provisions of Article 23 of the Treaty. Historically, PNG participation in the prawn fishery on the Australian side of the FLJ has been low.

Resource entitlements have generally been converted to effort entitlements in terms of number of boat days. These arrangements entitled PNG to operate up to seven prawn trawlers in 2006, and six in 2007 for the Australian area of jurisdiction, however PNG did not activate any of these licences (Larcombe and McLoughlin, 2007). Torres Strait Traditional Inhabitants have no entitlements in the fishery following the voluntary surrender of their interests in 2005 (PZJA, 2005).

PNG vessels that fish on the Australian side of the FJL are required to operate under the same regulations that exist for Australian vessels. In addition, the crew is subject to Australian quarantine, customs and immigration laws and is therefore not permitted to have contact with any Australian inhabitant or set foot on Australian territory.

Licensed PNG prawn boats which are not endorsed under the catch sharing arrangement may transit the Australian area of the TSPF provided their trawling equipment is stowed and secured.

PNG agreed to endorse seven Australian prawn trawlers to operate in the PNG area of jurisdiction in 2007. The Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) conducted an expression of interest (EOI) to all Australian licence holders in the TSPF to ensure a fair and transparent process was used to nominate licences for PNG endorsement. Preliminary conditions of entry were forwarded to DAFF in February 2007, and tabled at the third meeting of the TSPMAC for comment. The TSPMAC comments have been provided to DAFF, so that final conditions of entry can be negotiated with PNG. The licence holders that were successful in the EOI process will be advised of the final management conditions by the Australian Government. Provided that the conditions of entry are acceptable to the successful licence holders, their licences will be nominated for endorsement by the Australian Government during the PNG nomination process.

In addition there are a number of biosecurity and quarantine requirements that affect the capacity for Australian prawn operators to fish on the PNG side of the FJL and return product to Australian ports.

## **6.2 The Torres Strait Fisheries Act (1984)**

The *Torres Strait Fisheries Act 1984* (the TSFA) is the implementing legislation for the Australian Government's international obligations as stated under the Treaty.

The objectives of the Act are as follows:

In the administration of this Act, regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the following management priorities:

- (a) to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing;



- (b) to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone;
- (c) to adopt conservation measures necessary for the conservation of a species in such a way as to minimise any restrictive effects of the measures on traditional fishing;
- (d) to administer the provisions of Part 5 of the Torres Strait Treaty (relating to commercial fisheries) so as not to prejudice the achievement of the purposes of Part 4 of the Torres Strait Treaty in regard to traditional fishing;
- (e) to manage commercial fisheries for optimum utilisation;
- (f) to share the allowable catch of relevant Protected Zone commercial fisheries with Papua New Guinea in accordance with the Torres Strait Treaty;
- (g) 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.

The domestic legislation thus implicitly incorporates the Treaty objectives of recognising and protecting the traditional way of life and livelihood of traditional inhabitants and protecting the Torres Strait marine environment, and of trying to achieve these goals in a manner that minimises any restrictive effects on the traditional activities of the traditional inhabitants.

The Act establishes the PZJA as the responsible domestic body for the management of Torres Strait fisheries. The PZJA is responsible for monitoring the status of, and formulating policies and plans for the good management of, the fisheries under its jurisdiction.

The PZJA initially comprised two members - the Australian Government Fisheries Minister as the Chair and the Queensland Fisheries Minister. In 2002, membership was increased to three with the Chairperson of the Torres Strait Regional Authority (the TSRA) becoming a full PZJA member.

The Act establishes that the functions of the PZJA are to keep constantly under consideration the condition of Australian fisheries in the Torres Strait and for the formulation of policies and plans for their management. These fisheries are prawn, tropical rock lobster, pearl shell, Spanish mackerel, beche-de-mer, trochus, finfish, barramundi and crab.

## **7 EXISTING MANAGEMENT POLICIES**

### ***7.1 Commercial fishing licencing***

Licensing requirements for the Torres Strait commercial and non-commercial fisheries are managed by the QDPI&F. When the management arrangements for PZJA fisheries first came into effect in 1985, transferable licences were issued to persons who were not traditional inhabitants if they could demonstrate the required prior history and commitment to fishing in the Torres Strait. Since then, new licences have only been issued to traditional inhabitants.

People who are not traditional inhabitants and wish to obtain a licence for a fishery in Torres Strait must buy one of the transferable licences from existing operators. These licences are subject to strict boat replacement regulations limiting boat size. Traditional inhabitants can enter any commercial fishery by obtaining a traditional inhabitant's boat licence at a nominal cost. Under the PZJA, Queensland Fisheries Service (QFS) issues licences to fish in the Torres Strait.

#### ***7.1.1 Master Fisherman's licence***

Masters of licensed prawn vessels in the TSPZ are required to hold Torres Strait Master Fisherman's licences (MFL). No new licences are being issued for the TSPF.



### **7.1.2 Fish Receivers licence**

Fish receivers licences will be required as per the TSF Act 1984 from June 28, 2008.

### **7.1.3 Renewal of licences**

A Torres Strait prawn licence comes into effect on the day of issue and remains valid for 12 months.

### **7.1.4 Surrender of licences**

PZJA licence holders may surrender their licences by written notice to the PZJA.

### **7.1.5 Current licence fees**

The current fee structure for Master Fisherman's licences and Torres Strait Fishing Boat licences was introduced for all Torres Strait fisheries following the introduction of single jurisdiction on 1 April 1999.

### **7.1.6 Licence and day transfers**

Licences or days of effort can be transferred to any individual holding a MFL after lodging the appropriate form and fee with QFS. Access days can be transferred between operators in the fishery under conditions that facilitate the amalgamation of days and allow restructuring of the fleet.

## **7.2 Boat replacement**

In October 2001, the PZJA approved a boat replacement policy to discourage effort creep by penalising an operator who purchases a larger boat (Hanna et al., 2006). In these situations, a 20% reduction in the fishing day entitlement held (or a 20% reduction in the number of days transferred) applied for the following year. This boat replacement policy was suspended by the PZJA for the 2006 fishing season to assist restructuring in the fishery. The PZJA have noted that boat replacement issues will be addressed for future fishing seasons through the development of new management plans (Abetz, 2006a).

## **7.3 Restriction on the sizes of boat and gear**

The restriction on the size of boats is set out in Fisheries Management Notice No. 47 and the restriction on the size of gear is set out in Fisheries Management Notices No. 71. The contents of these Notices are summarised below.

### **7.3.1 Boat length**

Boats in the TSPF may not exceed 20 m in length unless at the time Fisheries Management Notice No 47 came into effect (2 September 1997) there was, in respect of the boat longer than 20 m, a Torres Strait prawn licence in force. This provision ceases to apply if the boat is replaced or increased in length.

### **7.3.2 Manner of measuring length of a boat**

The length of a boat is determined by measuring the distance between a vertical line passing through the foremost part of the hull and a vertical line passing through the aftermost part of the hull in a horizontal plane. This includes the length of any appendage, which effectively increases the length of the hull, but excluding the length of any anchor rail, bowsprit or similar appendage. Diagrams, which are used as a guide for determining the length of a boat, are included in the relevant fisheries notice.

### **7.3.3 Net length and mesh size**

Where otter trawl equipment is used the following provisions apply:



### *Nets*

- where only one net is used - the length of the net must not exceed 88 m; or
- where more than one net is used, including a try net - the total combined lengths of the nets must not exceed 88 m

### *Mesh*

- the size of the meshes in the cod end is not to be less than 38 mm; or
- the size of the meshes in all other parts of the net other than the cod end should not be less than 45 mm; or
- there must not be more than 150 meshes when measured in the vertical plane from the drawstring; or
- there must not be more than 1 line of ground chain across the mouth of each net; or
- the diameter of the links of the ground chain must not exceed 10 mm; and
- the chain must not be used with a weight or attachment, other than an attachment for joining the chain to the net.

## **7.4 Logbooks**

Logbook reporting in the TSPF is compulsory. A new logbook, the **NP15**, has been introduced for the TSPF for the 2007 season and beyond. Master Fishermen are required to complete the logbook by no later than one day after the day on which the fishing activities took place. Logbooks are supplied by AFMA. Each logbook contains full instructions on how the logbook should be completed. If an officer does not visit the vessel to collect completed logbook pages, Master Fishermen are required to return them in the manner specified in the logbook.

## **7.5 Bycatch and By-product**

### **7.5.1 Turtle Excluder and Bycatch Reduction Devices**

Fisheries Management Notice No. 81 requires all trawl nets used in the TSPF to be fitted with an approved turtle excluder device (TED). A TED is a device fitted to a net that allows turtles and other larger animals to escape immediately after capture in the net (Fig. 16). A complete description and specifications of approved TEDs are detailed in the Fisheries Management Notice. In addition, Fisheries Management Notice 70 requires all trawl nets to also be fitted with bycatch reduction devices (BRDs). This came into effect in February 2004. A BRD allows fish and other animals to escape from the net immediately after capture. These devices are usually fitted in or near the trawl codend (Fig. 16).



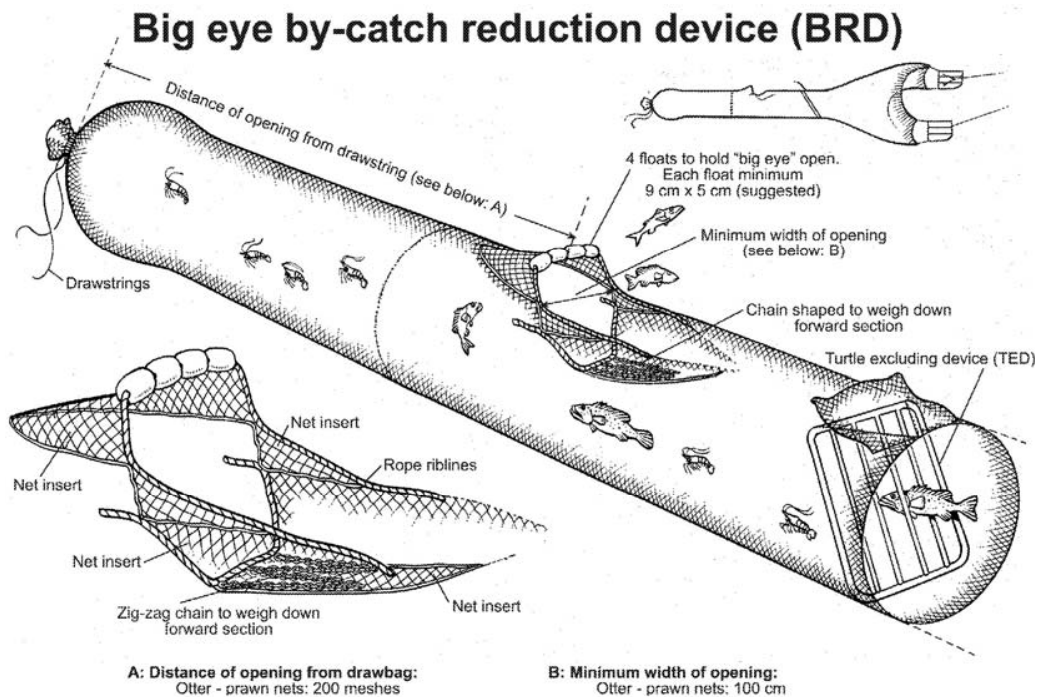


Fig. 16. Typical installation of a TED and a BRD in a trawl codend. Pictured is a top opening TED and a big eye BRD.

### 7.5.2 Carriage of other species (By-product)

Following the introduction of a single jurisdiction for all Torres Strait fisheries on 1 April 1999 all prawn trawl operators are permitted, as part of their Torres Strait Prawn Licences, to retain certain bycatch (referred to as by-product). Where a species is not specified in Table 2 (e.g. squid) no by-product limit applies and all catches of that species may be retained. Squid is an important cultural food source for traditional inhabitants. Under Fisheries Management Notice No. 19, prawn trawlers may not take, have in possession, or process tropical rock lobster.

The taking of dugong and turtle is also prohibited under FMN's No. 65 and 66 respectively as the taking of these species is reserved for traditional fishing only. The total prohibition on the take of pearl shell was introduced into the fishery in February 2004 under Fisheries Management Notice 69. This replaced the retention allowance of four pearl shells. Trawlers are, however, entitled under Fisheries Management Notice No. 56 to take, process or carry Moreton Bay bugs that have a carapace width of not less than 75 millimetres. In addition, under Fisheries Management Notices 78 and 79, any combination of Spanish mackerel or reef species can be taken, up to a maximum of 20 kgs (in any form including whole and processed). It should be noted though that the retention of these species, if taken by trawl is prohibited. These allowances are permitted to be taken by line only.

These allowances will be subject to ongoing reviews in the PZJA consultative process recognising possible future developmental fisheries.



Table 2. Torres Strait Prawn Fishery by-product allowances as prescribed in the Fisheries Management Notices (FMN).

SPECIES	MAXIMUM QUANTITY	FMN NO.
Mackerels (Scombrids)	Total of 20kg combined in any form	79
Finfish		78
Shark	Lesser of 5 sharks or 30kgs of shark	61
Shark fin	Nil	61
Tropical rock lobster	Nil	19
Pearl shell	Nil	69
Turtle	Nil	66
Coral	Nil	-

## 7.6 Vessel Monitoring Systems

All Torres Strait prawn trawlers are required to have an approved VMS fitted. The VMS unit, also known as the Automatic Location Communicator (ALC), must be operational at all times unless prior arrangements have been entered into with PZJA or manual position reporting is being undertaken as a result of a unit failure. The VMS unit, including the antenna and cabling, must not be altered, damaged, disabled or tampered with.

## 7.7 Closures

Seasonal and area closures of the TSPF are an important management tool, keeping sensitive areas free from trawling and allowing protection for areas at important times - such as during recruitment of small prawns to the fishery (Fig. 4).

Closures are detailed in FMN 40 of 24 February 1994. Minor amendments to FMN 40 are contained in FMN 49, 68, 72 and 72A.

Area and seasonal closures aim to reduce catches of juvenile prawns and encourage increased juvenile recruitment rates. The effectiveness of the area closure east of the Warrior Reef was substantiated by research that showed the majority of small brown tiger prawn and higher densities of small endeavour prawns inhabit this area during the closure months. Furthermore, both species migrate from this closed area into the fishery as they increase in size (Larcombe and McLoughlin, 2007).

### 7.7.1 Seasonal closure of the entire fishery

The entire TSPF is closed between 0600 hours local time on 1 December in any year and 1700 hours local time on 1 March in the following year.

**Carriage of equipment:** During the seasonal closure of the entire fishery all equipment that is capable of being used for any kind of trawling, or being used for taking prawns (this includes nets, boards, beams, and skids) must be carried either in the racks or on the deck; except between 1200 hours and 1700 hours local time on 1 March (in any year), the boat is anchored; or between 0600 hours and 1800 hours local time on 1 December (in any year), all equipment is out of the water or if any part of the equipment is in the water - that part is drawn up to the boat and is visible from nearby aircraft or boat; and if the equipment includes cod ends, the cod ends are open.



**Carriage of prawns:** Fisheries Notice No. 49 bans the carriage of prawns in the area of the TSPF from 0600 local time on 15 December to 1700 hours local time on 1 March each year. This regulation commenced on 15 December 1998.

**Other closures (detailed in FMN 40, 49, 68, 72 and 72A)**

West of Warrior Reef closure

Thursday Island and Cape York transit corridor - exemption to closure

Transit zone

Darnley Island closure

East of Warrior Reef seasonal closure

**7.8 Fisheries Management Notices for the Torres Strait Prawn Fishery**

Table 3 provides a description of each of the Fisheries Management Notices that currently impact on the activities of the Torres Strait Prawn Fishery.

Table 3. Fisheries Management Notices (FMN) affecting the Torres Strait Prawn Fishery.

<b>FMN No.</b>	<b>Title - Description</b>
19	Prohibition relating to the incidental taking and carrying of Tropical rock lobster by prawn trawlers in the Torres Strait Protected Zone and in certain waters outside but near the Zone.
29	Torres Strait Prawn Fishery - prohibition on taking of prawns by Papua New Guinea boats
40	Torres Strait Prawn Fishery - prohibition on taking prawns and carrying fishing equipment
47	Torres Strait Fisheries – restriction on size of boats
49	Torres Strait Prawn Fishery - prohibition on carriage of prawns and amendment to FMN No. 40
56	Prohibition on taking Moreton Bay bugs (size restriction)
61	Shark bycatch restriction and shark finning prohibition
65	Prohibition on the taking of dugong (area, gear and method restrictions)
66	Prohibition on the taking of turtle (gear restrictions)
68	Torres Strait Prawn Fishery - prohibition on carriage of equipment and amendment to FMN No. 40
69	Torres Strait Pearl Shell Fishery – prohibition on taking, processing and carrying of pearl shell (gear and size restrictions)
70	Torres Strait Prawn Fishery – requirement for use of Bycatch Reduction Devices
71	Torres Strait Prawn Fishery – restriction on net sizes
72	Torres Strait Prawn Fishery – prohibition on taking prawns (time allocation) and amendment to FMN No. 40
72A	Torres Strait Prawn Fishery – prohibition on taking prawns (time allocation)



78	Torres Strait Finfish Fishery – prohibitions relating to the taking, processing and carrying of finfish (gear, size and area restrictions and take and carry limit)
79	Torres Strait Spanish mackerel Fishery – prohibitions relating to the taking, processing and carrying of Spanish mackerel (gear and size restrictions and take and carry limit)
81a	Torres Strait Prawn Fishery – requirement for use of Turtle Excluder Device

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## 8 BYCATCH ACTION PLAN (BAP)

The Commonwealth policy defines bycatch as:

- i. that part of a fisher's catch which is returned to the sea either because it has no commercial value or because regulations preclude it being retained; and
- ii. that part of the "catch" that does not reach the deck of the fishing vessel but is affected by interaction with the fishing gear.

Trawling in the Torres Strait is not selective. Non-prawn bycatch is therefore an issue for management. A bycatch action plan for the Torres Strait prawn fishery was released in 1999. Since its release, turtle excluder devices (TEDs) were made mandatory in 2002 and bycatch reduction devices (BRDs) became compulsory in 2004 (Larcombe and McLoughlin, 2007). Shark bycatch limits were also introduced in 2002 restricting onboard shark bycatch to five trunks (with a maximum combined weight of 30 kilograms). Shark finning is also banned (Hanna et al., 2006). Further details are provided in section 7.5 above.

The Torres Strait Prawn Fishery Working Group (TSPFWG) developed the first bycatch action plan (BAP) in 1999 to address increasing public concern regarding prawn trawl operations and in recognition of initiatives being undertaken in adjacent trawl fisheries. The plan was reviewed and subsequently updated/replaced in 2005. The 2005 version of the BAP incorporated changes regarding the management of bycatch species in the TSPF between 2000 and 2004. As was the case with the first BAP, development of this plan was in accordance with the Australian Government policy on fisheries bycatch, prepared by the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF). This policy acknowledges the roles of AFMA and industry in addressing the direct and indirect impacts of fishing on marine systems.

As was the case with the original BAP for the TSPF, there is considerable overlap (vessels and species) between the TSPF and the Northern Prawn Fishery (NPF) in the Gulf of Carpentaria and the Queensland East Coast Otter Trawl Fishery (ECOTF). Thus the second reviewed TSPF BAP closely follows the review of the NPF BAP and the proposed management arrangements for the ECOTF.

Although the TSPF is managed under the Torres Strait Fisheries Act 1984, development of the BAP is in line with the requirement under the Commonwealth Fisheries Management Act 1991. That is to:

*“ensure that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment.”*

The three primary aims of the TSPF BAP are to:



- eliminate, to the greatest extent feasible, the catch of large animals such as turtles and stingrays; other protected species; and other species unable to withstand the effects of trawling;
- substantially reduce the ratio of bycatch to prawns; and
- provide protection for areas that are important habitat for vulnerable species of marine life.

The following strategies and actions will be adopted in pursuit of the aims of the BAP:

- modify fishing gear to minimise turtle and other bycatch;
- ensure bycatch is monitored in the TSPF;
- maximize the survival of bycatch;
- manage the physical impacts of trawling;
- conduct an ecological risk assessment; and
- continue to make information regarding bycatch available to fishers and the community.

Specific measures aimed at substantially reducing bycatch are included under Guidelines 2.1.1-2.1.6 in Part IV of this document. These include the mandatory use of TEDs and BRDs. Reducing the overall volume of bycatch caught may also remove some of the discards available for scavengers.

## **9 STRATEGIC RESEARCH PLAN**

### ***9.1 Research in Torres Strait Fisheries***

#### ***9.1.1 Cooperative Research Center for the Torres Strait (CRC Torres Strait)***

Up until June 30 2006, most fisheries research in the Torres Strait was managed under the auspices of the CRC Torres Strait, a not-for-profit company established in association with the Cooperative Research Centre for the Great Barrier Reef World Heritage Area (CRC Reef).

CRC Torres Strait involved the main stakeholder groups, resource management agencies and research institutions and with an interest in the Torres Strait marine environment. The respective agencies of the three PZJA members – AFMA, QDPI&F and the TSRA – were core participants in CRC Torres Strait, along with the Australian Institute of Marine Science (AIMS), CSIRO Marine, CRC Reef, GeoScience Australia, James Cook University (JCU) and the National Oceans Office (NOO). The Great Barrier Reef Marine Park Authority (GBRMPA), the Great Barrier Reef Research Foundation (GBRRF), and the Queensland Seafood Industry Association (QSIA), were supporting participants.

The CRC Torres Strait's research program aimed to:

- support the sustainable development of marine resources and minimise the impacts of resource use in the Torres Strait;
- enhance conservation of the marine environment and the social, cultural and economic wellbeing of stakeholders, in particular the Torres Strait people; and
- to contribute to effective policy formulation and management decision-making.

The CRC Torres Strait thus has a broad environmental mandate and unlike the PZJA was not focused solely on fisheries.



The TSSAC, the advisory body established under the PZJA consultative structure (described previously), has a dual function, being both an advisory body to the PZJA and its associated groups (the TSPMAC, TSFMAC and the working groups) and to the CRC Torres Strait Board.

### **9.1.2 Marine and Tropical Sciences Research Facility (MTSRF)**

The CRC Torres Strait was replaced on 1 July 2006 by the Marine and Tropical Sciences Research Facility (MTSRF). MTSRF will be responsible for planning, funding and coordinating research relating to the Great Barrier Reef (GBR) and its catchments, tropical rainforests and the Torres Strait. The Australian Government's intent is that MTSRF will become its main advisory body in regard to environmental research in North Queensland.

MTSRF was established as part of the Government's new Commonwealth Environment Research Facilities Initiative and is to receive funding of \$40m over the four years 2006-2009.

MTSRF has five priority research areas:

1. **Status of the ecosystems:** understanding the condition, trend and interdependencies of environmental assets of the North Queensland region; developing methods to support ongoing regular assessment and reporting; and developing methods to identify priorities for action.
2. **Risks and threats to the ecosystems:** understanding the threats to, and their impacts on the environment and hence the North Queensland region, and developing options to mitigate them.
3. **Halting and reversing decline of water quality:** understanding the causes and effects of changing water quality and water resource use in North Queensland's coastal catchments; developing options for improving practices, reducing risks and mitigating adverse impacts; and developing ways to measure the effectiveness of regulation, management and other actions to halt and reverse declines. This goal supports the objectives of the Australian and Queensland Government's Reef Water Quality Protection Plan (Reef Plan).
4. **Sustainable use and management of natural resources:** understanding the current and potential industry and community uses of biodiversity and natural resources with respect to ecological, social and economic sustainability; and providing information and options to assist North Queensland managers, industries and communities to optimise the use of biodiversity resources and minimise adverse impacts of use where they occur.
5. **Enhancing delivery:** Increasing the relevance and adoption of research in policy development, management applications and use practices; supporting effective data exchange and adoption of data standards; funding the delivery of relevant reports in the public interest; providing system wide overviews through the integration of biophysical studies of the environmental assets of North Queensland and the integration of social and economic research into these; and providing access to data and knowledge for organisations and the public.

Activities under MTSRF will be overseen by a Board comprised of individuals with expertise in business, research, community groups and government. There are no Torres Strait Islander representatives on the Board, though the Government has directed the Board to consult widely with Torres Strait communities and businesses. The Board is to establish a Scientific Consultative Committee to assist with identifying research priorities and developing an appropriate research strategy.

The nature of any future relationship between the PZJA and its TSSAC with MTSRF and its scientific advisory body is yet to be determined. However, given that a key criterion in the assessment of MTSRF proposals is the relevance of the research to end-users, some



mechanism will need to be established to involve the PZJA and indigenous groups in future MTSRF turtle and dugong research.

### **9.1.3 Other research programs**

The Torres Strait fisheries research program is designed to identify and investigate key biological parameters of fish stocks in the Torres Strait and to provide advice on which to base rational and effective fisheries management programs. Additional detail on recent and current research programs are outlined in Part IV of this assessment.

## **10 TSPF MANAGEMENT PLAN (2008)**

### **10.1 Overview**

Currently there are a number of management arrangements for the TSPF that may not best pursue the PZJA management objectives, and reduce the Authority's ability to achieve its objectives.

The TSPF is regulated through variations to annual fishing licences. The broad limitation of this approach is that it does not provide long term secure access rights or promote certainty in the ongoing management environment for the fishery. From an industry perspective there is no guarantee of ongoing access as the PZJA may exercise its discretion in approving the grant of licences, and although rarely used it is possible for the PZJA to vary its management arrangements without consultation. Management based solely on variations on licences may also promote some uncertainty for industry.

At an out-of-session meeting of the PZJA on December 23, 2005 the PZJA agreed to a number of new arrangements to promote greater management efficiency in the TSPF. These new arrangements were aimed at providing certainty to industry, giving effect to Australia's fisheries obligations to PNG and Torres Strait Islanders under the Torres Strait Treaty, delivering equitable resource distribution between the commercial and community fishing sectors and achieving improved fisheries resource sustainability consistent with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

To introduce a more flexible system of management, the PZJA agreed by teleconference on November 3, 2005 to move the management of the TSPF under a Plan of Management. Details of the proposed new management arrangements were packaged under a draft management plan and presented to PZJA 20 in October 2006. The management plan included the transition process for moving from the existing system of fishing nights to the new system involving a form of effort units and access as a proportion of the total pool of available fishing nights. This system of management in 2008 should facilitate adjustment of effort up or down. Building decision rules will add security and certainty to the fishery by ensuring that any changes in the cap are made according to clear and pre-determined rules, and with an overall aim of maintaining the sustainability and profitability of the fishery whilst minimising the variation from one year to the next to facilitate business efficiency.

The management plan was sent out for drafting as drafting instructions for a formal management plan under the *Torres Strait Fisheries Act 1984* in July 2007. The PZJA's intention is to have the TSPF operating under the management plan for the 2008 season, starting on March 1<sup>st</sup>, 2008.

### **10.2 Management Plan Objectives**

The management objectives for the TSPF under the management plan are:

The Objectives of the *Torres Strait Fisheries Act 1984* s8.



In addition, the following fishery specific objectives have been proposed for consideration:

- Objective 1** Ensure the optimum utilisation of the fishery resources within the TSPF is consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle.
- Objective 2** Promote economic efficiency in the utilisation of the fisheries resources within the TSPF.
- Objective 3** Ensure cooperative, efficient and cost effective management of the Fishery.
- Objective 4** Manage the fishery's interaction with the marine environment including the incidental capture of non-target species and impacts on demersal habitats.

### **10.3 Unitisation of fishery effort allocations (units of fishing capacity)**

The TSF Act system is based around units of fishing capacity and the granting of fishing licences. The maximum period a licence is granted for is set by regulation. Current Regulations set the maximum period as 1 year. The TSF Act (Section 15A) allows for a system of "units of fishing capacity" which may be translated into catch or use entitlements. While units of fishing capacity (UFC's) must be attached to a licence in order to allow for fishing they are provided for by statute and can be traded as separate commodities. The TSF Act also allows the plan to establish the duration of these UFCs which could be set as the "duration of the plan". There is provision (depending on the terms of the Management Plan) to be able to be retain UFCs separate to the licences which may expire during the course of the plan.

A Management Plan determined under the TSF Act would allow for the application of a wide range of management measures needed to pursue ecosystem based fisheries management, for the allocation of units of fishing capacity, and the translation of those units into Annual Use Entitlement. (UFCs, section 15A(6) of the TSF Act). UFCs can be in the form of input (i.e. Individual Transferable Effort, ITEs) or output (i.e. Individual Transferable Quota, ITQs) controls and provide long-term, secure, tradable access rights. Further, Management Plans will provide operators with a clear framework for management decisions; appeals processes and objectives and performance criteria are outlined. Once determined, Management Plans remain in force for a period of ten years, consistent with the *Legislative Instruments Act 2003* or until revoked.

Individual Transferable Effort units can be administered in a fishery in a number of forms including annual gear limitations (i.e. metres of trawl net), vessel storage capacity or fishing days. ITE units provide incentive to maximise efficiency of each shot, as each effort unit expended during a fishing event will come off the seasonal effort allowance. This system will also provide incentive to maximise catch and minimise interactions with unwanted/low value species. There is, however, the potential for effort creep as industry improves their efficiency under current gear restrictions.

Section 15A(6)(ga) provides for the management plan to translate these units of fishing capacity into catch or use entitlements. Under a Torres Strait Prawn Fishery Management Plan, it is anticipated that the PZJA will:

- Issue individual fishers with a unit of fishing capacity (units) which would represent a share of the Australian portion of the Torres Strait Prawn fishery (these units will be tradable);



- Determine the Total Allowable Effort based on the best available scientific advice. The Total Allowable Effort will be expressed in the number of days available to operators consistent with the full range of other effort restrictions in the Torres Strait Prawn fishery;
- On an annual basis (at the time of renewal of licenses) the PZJA will issue individual fishers with an Annual Use Entitlement (also expressed in days).
- The Annual Use Entitlement would be determined by a formula which divides the number of Australian units in the fishery by the Total Allowable (Australian) Effort to determine a translation value.
- The PZJA will then multiply the translation value against the number of individual units of fishing capacity to determine an individual's Annual Use Entitlement. The Annual Use Entitlement is also tradable, separately to the units of fishing capacity.

The PZJA believes this to be the most effective of the input regimes due to its adjustment flexibility and relationship to effective fishing effort. However, the monitoring of effort remains an important element of effective management.

The proposed Management Plan sets out a process for determining annual TAE involving consultation between scientists, managers, industry and other stakeholders, using the latest available biological and economic data, as well as the input of fishing operators. Under the management system, fishing rights do not confer on entitlement holders the right to an absolute tonnage of fish, but rather to a clearly defined proportion of each annual TAE.

The need for administrative flexibility is incorporated into the proposed Management Plan for the fishery by way of Section 15 of the TSFA 1984. This provides that the PZJA may reconsider decisions made under a plan of management if provision for this has been made in the plan of management. Further flexibility may be available by amending conditions on licences, however Section 15A(9) provides that "while a plan of management is in force for a fishery, the performance of functions and the exercise of powers under this Act in relation to the fishery must be in accordance with the plan of management, and not otherwise."

#### **10.4 Leasing of units of effort**

Leading up to and including 2003, Torres Strait Prawn licence holders were fishing at around 77% of the total number of fishing days allocated to Australian operators each year. Since then the proportion of days used has steadily declined to a low of 68% in 2006 (ca. 4,700 of 6,867 days). A contributing factor for low utilisation of the Total Allowable Effort (TAE) is that at present there are no licence conditions or other regulations relating to leasing in the TS Prawn fishery and as such, any licences that do not fish their allocation in a given season (including those in no-boat status), cannot lease unused nights to other operators. Thus, if TSPF licence holders spend their time in another fishery or are unable to fish their full quota of the TSPF TAE in, the fishery remains underutilised.

In an effort to increase the utilisation of the TAE in the TSPF, a flexible approach to leasing units of effort within the fishery was proposed by government to industry at the TSPMAC meeting in September 2006. At the time of the meeting industry representatives held conflicting opinions on whether leasing should be introduced in the fishery.

At the TSPMAC in February 2007, the issue of leasing was again raised, however industry requested that the response period for the feedback form be extended to the end of February, before further discussions were held. In June 2007, the TSPMAC again discussed leasing options with industry representatives strongly against external leasing. However, industry did support the concept of 'Internal' leasing of units of effort.



One of the main concerns repeatedly raised by industry representatives on the TSPMAC, since leasing was first raised is that the introduction of leasing could undermine the asset value of existing Australian entitlements. However, results from a recent industry survey showed that 9 of 14 respondents supported leasing arrangements in the fishery. ABARE have also indicated that it is highly unlikely that making an asset tradable on a temporary basis would reduce overall market value. The introduction of more flexible trading arrangements (whether permanent or temporary) allows for the rights to flow to those that value them the most. This occurs in all open markets and provides the basis for trade.

The PZJA Standing Committee has already indicated that providing PNG were to agree, future access to unused PNG nights in the TSP fishery would be achieved through an annual leasing mechanism. The TSP industry subsequently accepted the proposal of leasing unused PNG nights.

### **10.5 Appeal Mechanisms**

Section 15A(6)(i) of the *Torres Strait Fisheries Act 1984* currently provides that a plan of management *may* make provision for the “reconsideration of decisions made under the plan of management”.

#### **10.5.1 Merits Review by the AAT**

As a plan of management is a legislative instrument, a plan of management itself can provide for AAT review of a decision made pursuant to the power which it grants.

Section 25(1)(a) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) provides that an ‘enactment’ may provide for AAT review of a decision made under that enactment. Legislative instruments are included under the definition of enactment by section 3 of the AAT Act. Accordingly, as a plan of management is created by legislative instrument, it may provide for AAT review of decisions made under it. It should be noted that the jurisdiction of the AAT is not automatic. An enactment must explicitly grant the AAT jurisdiction.

#### **10.5.2 Judicial Review**

Decisions under a plan of management will be able to be judicially reviewed. Unlike AAT review, the right to judicial review does not need to be conferred by an enactment. Judicial review is available under the *Administrative Decisions (Judicial Review) Act 1997*, s39B of the Judiciary Act and s75(v) of the Constitution.

Merits review and judicial review are very different. When undertaking merits review, the AAT ‘stands in the shoes’ of the original decision-maker and can substitute its decision with that of the original decision-maker. Judicial review is undertaken by the court and the court cannot substitute its opinion with that of the original decision-maker nor remake a decision. A court can only decide if a decision has been made lawfully. If the court finds that the decision has not been made lawfully it sends the decision back to the original decision-maker to be made according to law.

Given the expense associated with applications for judicial review and the limited orders a court can make, persons wishing to challenge a decision made under a plan of management are far more likely to choose merits review in the first instance. It should be noted however, that judicial review is available from a decision of the AAT. A Management Plan and any instruments under the plan are disallowable instruments and decisions made under the management plan are subject to review of the Administrative Appeals Tribunal.

