Chapter 15

Sustainable development and commercial enterprise

15.1 The marine resources of the Torres Strait are a vital part of both the subsistence and commercial life of Torres Strait Islanders and neighbouring PNG villages. Outside the government sector, fishing is the biggest industry in the Torres Strait. According to Mr See Kee, fishing offers 'the most potential immediately'.[1]

15.2 Although the Treaty places a heavy emphasis on conserving and protecting the environment so that traditional inhabitants can carry on their customary way of life, it also recognises the importance of economic development. In this chapter, the committee complements its consideration of traditional fishing in the Torres Strait by turning its focus to the commercial opportunities for the region's fisheries industry. It starts by outlining the potential for commercial fishing in the Torres Strait and some of the arrangements under which commercial fishers operate in the region.

Potential for commercial fisheries in Torres Strait

15.3 A number of fisheries make up the industry in the Torres Strait—bêche-de-mer, the Torres Strait crab, finfish, pearl shell, prawn, trochus and tropical rock lobster (TRL). The most valuable commercial fisheries in the Torres Strait are prawn, TRL, Spanish mackerel and finfish. The TSRA told the committee that TRL is the second most valuable fishery and one that is important to Torres Strait Islanders because of the high value of the catch and the relatively low operational costs compared to the other fisheries.[2]

15.4 Mr Roland Pittar, DAFF, informed the committee that the value of the TRL fishery in 2007–08 was about $9.4 million and the Torres Strait prawn fishery $10.4 million. Professor Hurry advised that the focus to date in TRL fishery in the Torres Strait was on taking and selling lobster tails. He noted:

> There is far more money in live lobster in the world market than there is in lobster tails. So, in that sense, you could increase the return from the rock lobster fishery.[3]

15.5 With regard to the prawn fishery, Professor Hurry explained that this commercial fishery depended on the economics of fishing in the strait and the cost of operating there in any given year. He informed the committee:

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1 *Committee Hansard*, 24 March 2010, p. 9.

2 *Submission 18*, p. 23. See also *Committee Hansard*, 17 December 2009, p. 67.

3 *Committee Hansard*, 17 December 2009, p. 60. Mr Arlidge told the committee that the TRL industry was worth $12 million to $20 million for the entire Torres Strait including the Papua New Guinea side. *Committee Hansard*, 25 March 2010, p. 43.

> It is often driven by the Australian dollar. The Australian dollar is quite strong at the moment, so it is hard to trade some of our prawns on the market. This year you will see that the fishing effort in the prawn fishery in the Torres Strait is quite low. In any year, if they fished the number of days that we make available to them, the fishery would be pretty well fully fished—it would be fished at a sustainable level.[4]

15.6 The value of the finfish fishery stood at about $1 million for 2007–08 which was made up of reef line fishery of around $0.55 million, and the Spanish mackerel fishery at about $0.68 million.[5] Professor Hurry was of the view that 'there is real potential to catch and trade live coral trout and live reef fish out of the Torres Strait into the [valuable] world live reef fish market'.[6] He suggested that while the reef line and Spanish mackerel fisheries have scope for development, it was up to the Torres Strait Islanders to determine how they develop that fishery.[7]

15.7 The hand collectables, that is, the more traditional fisheries such as the bêche-de-mer, trochus and commercial pearl fisheries, were not ascribed a gross value of production.[8] In addition, the Islanders fish and collect crayfish for domestic consumption.[9] The committee considered bêche-de-mer in its discussion on conservation of vulnerable species.

15.8 Mr Bedford, TSRA, also noted the many other economic opportunities associated with the fishing industry, for example boat building and maintenance. He suggested that these are 'potentially areas we are trying to concentrate on investing in the future'.[10]

15.9 The committee now looks at the provisions of the Treaty and arrangements for commercial fishing in the Torres Strait.

Promoting economic development under the Treaty

15.10 Part 5 of the Treaty is concerned with the Torres Strait Protected Zone (TSPZ) commercial fisheries. As noted in chapter 2, the Treaty established the TSPZ, which includes all the land, sea, airspace, seabed and subsoil within a large area delineated in the Treaty (see map, p. 8). This zone comprises most of the area within the Torres Strait: all the Australian islands north of the seabed line, through the central part of the strait, excluding the southern islands adjacent to Cape York Peninsula. The TSPZ is

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4 *Committee Hansard*, 17 December 2009, p. 60.

5 *Committee Hansard*, 17 December 2009, p. 58.

6 *Committee Hansard*, 17 December 2009, p. 60.

7 *Committee Hansard*, 17 December 2009, p. 59.

8 *Committee Hansard*, 17 December 2009, p. 58.

9 *Committee Hansard*, 17 December 2009, p. 58.

10 *Committee Hansard*, 24 March 2010, p. 10.

intended to safeguard the interests of Indigenous communities in the region and for environmental protection.

15.11 The Treaty requires both Australia and PNG to cooperate in the conservation, management and optimum utilisation of commercial fisheries operating in the zone (Article 21). To this end, Australia and PNG are to consult and enter into arrangements for the effective implementation of the provisions of this part of the Treaty. It should be noted that commercial activity in the TSPZ is not to prejudice the purpose of the Treaty with regard to protecting the traditional way of life.

Catch-sharing arrangement

15.12 Under the Treaty, Australia and PNG may undertake, where appropriate, to negotiate subsidiary conservation and management arrangements for individual TSPZ commercial fisheries. As part of these arrangements, the countries jointly determine the allowable catch of a commercial fishery, or the 'optimum sustainable yield'.

15.13 The Treaty also provides for a complex catch-sharing arrangement between Australia and PNG of the allowable catch of fish. In areas under Australian jurisdiction, the proportion set down under the Treaty is 75 per cent for Australia and 25 per cent for PNG. In certain areas, Australia and PNG have an equal 50 per cent share. In areas under PNG jurisdiction, Australia has a 25 per cent share and PNG 75 per cent. With a number of exceptions, PNG has the sole entitlement to the allowable catch of the commercial barramundi fishery near its coast.[11] Professor Hurry drew on the TRL to explain the process of assessing the level and proportion of catch:

> CSIRO do a stock assessment of the stocks both on our side and their side…and we allocate 25 per cent of what the TAC [total allowable catch] is to Papua New Guinea, and the rest of it is for our fishers and the Torres Strait islanders to fish on our side of the line.[12]

15.14 He used the prawn fishery to illustrate how an allocation is determined, explaining that prawn fishing is managed by allocating fishing nights:

> On a scientific basis you work out the likely total allowable catch of prawns on the Torres Strait and then work out an average night's catch. So you determine a number of nights against what you think the allowable catch should be. Then you allocate that and you keep 25 per cent of the allocation for Papua New Guinea.[13]

15.15 Professor Hurry explained that each year, both countries have a 'fairly open discussion' on the allocation of resources and the management of them, including the formal arrangements for sharing the catch. He noted that if PNG decides not to use its full quota, Australia can seek to take up the unused portion. He explained that to date,

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11 See Article 23 of the Treaty.

12 *Committee Hansard*, 17 December 2009, p. 55.

13 *Committee Hansard*, 17 December 2009, p. 55.

PNG has agreed to Australia having its 25 per cent share of the catch in the area under Australian jurisdiction, which is then allocated to Australian fishers.[14]

15.16 As an example, for the 2008–09 period, the PNG National Fisheries Authority informed DAFF that they would not use their Spanish mackerel entitlement and made it available to Australia. Such decisions are made annually.[15] With regard to Australian commercial fishers taking up their entitlement to a percentage of the allowable catch on the PNG side, Professor Hurry noted that normally, Australian boats choose not to fish across the line.[16]

Issuing licences

15.17 Cooperation is central to a number of other provisions under Part 5 of the Treaty. The countries are to consult on, and cooperate in, how they issue and endorse licences permitting commercial fishing in the TSPZ. In doing so, the responsible authorities of both countries are to take account of the desirability of promoting economic development in the Torres Strait area and employment opportunities for the traditional inhabitants. Both countries are required to ensure that the traditional inhabitants are consulted from time to time on the licensing arrangements in respect of TSPZ commercial fisheries. The Treaty also requires both countries to share information, consult and cooperate with regard to inspection and enforcement measures governing commercial fishery in the TSPZ.

Monitoring fishing activity

15.18 Monitoring commercial fishing activity under the agreements reached by Australia and PNG is the responsibility of the respective governments. For example, the recent audit on finfishing in the Torres Strait explained that were PNG to take up their catch in the area of Australian jurisdiction, any PNG vessels would need to seek finfish fishing endorsement from the Queensland Department of Employment, Economic Development and Innovation (DEEDI). They would be bound by the same fishing requirements governing the holders of authorised Australian vessels, such as submitting log books with AFMA.

15.19 Professor Hurry noted that PNG nationals usually nominate which vessels are coming across to fish on what fisheries on Australia's side of the zone. For instance, if they were coming across to fish rock lobster, they would identify the vessels, the number of tenders with them and the period they would spend in Australian waters.[17]

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14 *Committee Hansard*, 17 December 2009, pp. 54–55.

15 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 51.

16 *Committee Hansard*, 17 December 2009, pp. 54–55.

17 *Committee Hansard*, 17 December 2009, p. 54.

AFMA monitors the total catch to ensure that the PNG fishers remain within their allocated share of the catch.[18]

15.20 Interestingly, in November 2009, the Torres Strait Management Advisory Committee reported that for the first time in a number of years, PNG cross-endorsed vessels had accessed the Australian fishery for TRL. It noted concerns raised by community fisher groups about compliance and the monitoring of those vessels. The advisory committee indicated that during discussion on conditions required of cross-endorsed vessels, some ambiguous areas were identified that require further investigation.[19] It noted further:

> A pre-season information session with the skippers of PNG cross-endorsed vessels is being considered for 2010 as a way to ensure that all licence conditions are fully understood by those on the vessels before they enter the Australian jurisdiction.[20]

15.21 This suggestion ties in with the comments made by stakeholders to a recent review of the PZJA who voiced concerns about PNG's involvement in information-sharing activities such as meetings. The paper stated:

> …it is important to have PNG fully engaged and that proper communication processes be put in place with PNG to ensure attendance at meetings. The principal focus of consultative arrangements needs to take account of the Treaty provisions, but also needs to be on the ecological sustainability of the fisheries resources in the Torres Strait.[21]

15.22 This observation is consistent with a dominant theme in this report—the critical importance of having PNG actively engaged with Australia in implementing the provisions of the Treaty. The concerns raised by the community fisher groups about PNG vessels failing to comply with the terms of their Australian fishing licences may well be resolved by having appropriate communication processes in place.

15.23 Aside from the matter raised above about ensuring that PNG fishers are aware of the conditions of their licence and comply with those conditions, the committee is not aware of any major criticism of the provisions of the Treaty with regard to PNG and commercial fishing in the TSPZ. Some witnesses, however, were highly critical of

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18 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management,* Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, paragraph 3.34, p. 51.

19 Torres Strait Management Advisory Committee, Meeting no. 11, Chair's Summary, 11–12 November 2009, p. 6.

20 Torres Strait Management Advisory Committee, Meeting no. 11, Chair's Summary, 11–12 November 2009, p. 6.

21 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, pp. 41–42.

the domestic management of commercial fishery on the Australian side, in particular, the performance of the Torres Strait Protected Zone Joint Authority (PZJA).

Torres Strait Protected Zone Joint Authority

15.24 The *Torres Strait Fisheries Act 1984* (Cth) (TSFA) gives effect in Australian law to the fisheries elements of the Treaty. In administering the Act, regard is to be given to the rights and obligations conferred on Australia by the Torres Strait Treaty.[22] Section 30 of Act establishes the PZJA. The Authority is the key decision-making and policy-setting body for managing commercial and traditional fisheries in the Australian portions of the TSPZ. Under this unique model, the PZJA manages the prawn, TRL, Spanish mackerel, reef line, sea cucumber, trochus, pearl shell, crab, barramundi and traditional fishing (including turtle and dugong) in the area of the Torres Strait under Australian jurisdiction.[23] Its main functions are to:

- keep under constant consideration the condition of fishery under its management;
- formulate policies and plans for the good management of the fishery; and
- for the purposes of the management of the fishery
    - (i) exercise the powers conferred on it and
    - (ii) co-operate and consult with other authorities in matters of common concern.[24]

15.25 The PZJA is a small body comprising the Commonwealth Minister for Agriculture, Fisheries and Forestry, the Queensland Minister for Primary Industries, Fisheries and Rural and Regional Queensland, and the Chairperson of the TSRA. It is responsible for legislative policy formulation and compliance and the bilateral relationship on fisheries with PNG. The authority 'has a policy of enhancing the opportunities for Islander participation in all sectors of the fishing industry'.[25]

15.26 The three members of the PZJA are supported by their respective government agencies—DAFF; the Queensland Primary Industries and Fisheries, AFMA and the

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22 Section 8, *Torres Strait Fisheries Act 1984* (Cth). The Treaty has been incorporated into Australian law by the *Torres Strait Fisheries Act 1984* (Cth) and the *Torres Strait Fisheries Act 1984* (Qld) and into PNG law by the *Fisheries (Torres Strait Protected Zone) Act 1984* (PNG). *Submission* 18, p. 6.

23 Australian Government, *Fishery Status Reports 2008, Status of Fish stocks and Fisheries Managed by the Australian Government*, Bureau of Rural Sciences, Australian Bureau of Agricultural and Resource Economics, DAFF, p. 213.

24 Section 34, *Torres Strait Fisheries Act 1984* (Cth).

25 Torres Strait Protected Zone Joint Authority, *Annual report 2007–08*, p. 14. PZJA website, http://www.pzja.gov.au/fisheries/default.htm (accessed 11 March 2010) and Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

TSRA. These four agencies are responsible for different aspects of fisheries management in the Torres Strait.[26]

15.27 DAFF contributes to the development and implementation of policy for Torres Strait fisheries and provides the secretariat for the PZJA.[27]

15.28 The Queensland Primary Industries and Fisheries also assists in developing PZJA fisheries policy. It acts as an agent for the PZJA, issues licences on behalf of the PZJA and has responsibility for the collection of the levies.[28] It also manages recreational fishing, including charter fishing.[29]

15.29 AFMA provides the overarching fisheries management services to the PZJA. It conducts the day-to-day operational management of fisheries in the Torres Strait and maintains contact with fishermen on the islands.[30] It also develops the fisheries management plans for the fisheries, consults with communities on the plans, looks at the management of the turtle and dugong, helps the Islanders with leasing arrangements of the finfish fishery, manages the prawn fishery and organises the management advisory committees and the scientific work.[31]

15.30 In addition, AFMA coordinates the PZJA's foreign compliance activities in association with border protection agencies, provides advice to the PZJA on its management services and to the PZJA Chair through DAFF.[32] It maintains a management office on Thursday Island.

15.31 The TSRA, which is also based on Thursday Island, is a strong advocate for maximising the opportunities for Torres Strait Islanders and Aboriginal people living in the strait to participate in the local fishing industry. It recognises that economic participation is important to removing Indigenous disadvantage in the region and further that commercial fishing provides a solid platform for achieving this objective. Mr Kris explained that, through the PZJA, the TSRA is looking at the fishing industry as a means to economic development.[33] The TSRA seeks to do its utmost to enable

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26 PZJA website, http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010).

27 See for example, Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 18.

28 *Committee Hansard*, 17 December 2009, p. 57. See also PZJA website http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010)

29 PZJA website http://www.pzja.gov.au/about_us/who.htm (accessed 18 October 2010) and Professor Hurry, *Committee Hansard*, 17 December 2009, p. 57.

30 Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

31 Professor Hurry, *Committee Hansard*, 17 December 2009, p. 57.

32 Mr Paul Morris, *Committee Hansard*, 17 December 2009, p. 50.

33 *Committee Hansard*, 24 March 2010, p. 7.

Indigenous people to obtain employment and income from the fishery industry and ensure that the interests of traditional inhabitants are represented in the PZJA.[34]

15.32 To this purpose, two dedicated officers within the TSRA coordinate and support the engagement of Torres Strait community fisher representatives in the PZJA consultative structure.[35] The TSRA Fisheries Coordinator arranges for up to six representatives from this group to attend 'all of the consultative forums on the PZJA business calendar'.[36] The TSRA Chair has 'a clear role supporting the two ministers in making policy decisions for the Torres Strait Fisheries'.

Criticism of PZJA

15.33 For a number of years, the management of fisheries in the Torres Strait has come under strong criticism.[37] In 2008, the PZJA agreed to a review of the agreement relating to the cost of managing fisheries in the Australian sector of the TSPZ. The PZJA also requested that relevant agencies look at the current agreement and provide options for consideration prior to completing the 2009–2010 PZJA budget. This request prompted a review of current governance arrangements which resulted in the publication of a 'high level discussion paper'. The paper identified major problems with the governance structure of the PZJA. In essence, it found that:

> …the current administrative and governance arrangements are cumbersome, inefficient and cause considerable frustration and in some cases friction, particularly to those based on Thursday Island with day to day exposure to the various and sometimes difficult and complex fisheries management issues which arise from time to time.[38]

15.34 The discussion paper noted that the four agencies sharing responsibility and accountability for different aspects of fisheries management are situated in three geographically different locations. It formed the view that the current governance arrangement did not assist the achievement of sound fisheries management outcomes.

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34 See for example, TSRA *Submission 18*, p. 21.

35 TRSA website, 'Policy Coordination & Development, http://www.tsra.gov.au/the-tsra/policy-coordination--development.aspx and http://www.tsra.gov.au/the-torres-strait/issues/marine--fisheries.aspx, (accessed 18 February 2010). See also AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 23.

36 *Submission* 18, p. 21. According to AN AFMA/QDI&F/TSRA, Discussion Paper, 'As far as fisheries management is concerned, the TRSA sees itself as an enabler and facilitator of communication and information, but makes it plain that its first obligation is to the aspirations of traditional inhabitants.' AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 23.

37 Bill Arthur, *Torres Strait Islanders and fisheries: an analysis of economic development programs*, Australian Government, National Oceans Office, Centre for Aboriginal Economic Policy Research, Australian National University, June 2005, pp. 6–7.

38 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 27.

In particular, it drew attention to delays in decision making that 'are causing stakeholders to lose faith in the consultative structure and the ability of the PZJA to manage fisheries effectively'. In its view, the stakeholders 'are becoming unwilling to attend meetings as they see them as a waste of time if no decisions are being made or carried through'.[39]

15.35 Evidence to this committee reinforced this assessment. The Queensland Government was of the view that a 'convoluted governance arrangement' under the PZJA was a major problem with fisheries management in the Torres Strait, which resulted 'in an excessive amount of time for even simple decisions to be made'.[40] It identified the need for clearer accountability; more streamlined decision-making; a single contact point for stakeholders; greater consistency between fisheries management in the Torres Strait and other fisheries; and more efficient operations.[41] In its view, each of the fisheries should be managed under the auspices of a single existing body, preferably AFMA'.[42] The Queensland Rock Lobster Association was scathing in its criticism of the PZJA, describing its bureaucracy as ponderous and stating further:

> It is oversized, overcomplicated and absurdly expensive, and seems incapable of achieving any meaningful or useful outcomes. Its chief achievement seems to be the frequent employment of consultants at great expense to produce reports which are often valuable and insightful, but are rarely acted on because their conclusions are politically unpalatable and/or expose the dysfunctional nature of the system itself.[43]

15.36 The association referred to 'duplication of functions, internal conflicts between agencies, inertia, evasion of responsibility, and inability to make decisions on key issues (sometimes over periods of many years)'.[44] The M. G. Kailis Group echoed these sentiments, citing 'the immense frustration felt by industry given the lack of progress in recent years'.[45]

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39 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 27.

40 *Submission 20*, p. 15 and Queensland Government, answer to question on notice taken 25 March 2010. The Queensland Government noted its reference to '"the governance arrangements of the TSRA" should not be interpreted as a criticism of the TSRA. Rather, it is a factual statement that the collegiate decision-making process quite properly required by the TSRA is not consistent with a successful commercial operation'.

41 Queensland Government, answer to question on notice taken 25 March 2010. It noted that currently some 30 full time staff spread across 4 state and Commonwealth departments are engaged in the PZJA costing approximately $6.5 million for a comparatively small fishery.

42 *Submission 20*, p. 15.

43 *Submission 7*, p. [3].

44 *Submission 7*, p. [3].

45 *Submission 10*, p. 2.

PZJA—review of management and administration

15.37 When questioned about problems in the management of fisheries in the Torres Strait, Mr Malcolm Southwell, AFMA, explained that his agency was aware of stakeholder concerns about the complexity of arrangements. He noted AFMA's presence on Thursday Island and said, 'We hear it day to day'.[46] DAFF and AFMA informed the committee that agencies had undertaken a separate administrative review to look at ways to simplify and streamline the administration arrangements and improve the administrative efficiency of the PZJA itself.[47] The review applied to how all the fisheries were administered, and was with the agencies for consultation and comment and would then go to the PZJA in the near future.[48] Mr Pittar, DAFF, explained that the review was endeavouring to have 'clearer definition of which agencies do what'.[49] Mr Southwell added that a range of options was under consideration in terms of simplifying the administration. He stated further: 'certainly one of those is for AFMA to take a greater role. We have heard that from stakeholders, but it is but one of many options'.[50]

Managing Islander and non-Islander interests and expectations

15.38 The discussion paper which prompted the review also identified 'the differing interpretations and cultural approaches taken to the management of fisheries resources in the Torres Strait' as a key issue. It found that these different approaches have made it difficult 'to establish and maintain a clearly defined governance and accountability framework for fisheries management'. It added:

> There is a strong difference in philosophical approach between the Traditional Inhabitants (who wish to determine their own affairs based on the provisions of the Torres Strait Treaty, and who are supported in this endeavour by the Torres Strait Regional Authority) and the modern day approach to fisheries management taken by fisheries agencies such as AFMA and [Queensland Department of Primary Industries and Fisheries] QDPI&F operating under statutes enacted by their Parliaments.[51]

15.39 Evidence before this committee also highlighted problems due to cultural differences. The TSRA noted the complexities involved in managing fisheries in the Torres Strait and referred to the fact that the industry has traditional inhabitant (subsistence and community fishing) and non-indigenous (commercial fishing) dimensions. With regard to cultural difficulties, the Queensland Government

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46 *Committee Hansard*, 18 June 2010, p. 37.

47 *Committee Hansard*, 18 June 2010, p. 37.

48 *Committee Hansard*, 18 June 2010, p. 37.

49 *Committee Hansard*, 18 June 2010, p. 37.

50 *Committee Hansard*, 18 June 2010, p. 37.

51 AFMA/QDPI&F/TSRA, Discussion Paper, 'Review of Torres Strait Protected Zone Joint Authority Fisheries Administration Arrangements', 22 June 2009, p. 19.

identified the following as two major problems with the fisheries management in the Torres Strait.

- a distinct lack of trust on behalf of the Traditional Inhabitant sector regarding what the PZJA is endeavouring to deliver in the TSPZ—that is, sustainable allocation of resources in a manner in line with the Torres Strait and *Torres Strait Fisheries Act 1984;* and
- a stalemate over continued claims by Traditional Inhabitants to regain full ownership of TSPZ resources.[52]

15.40 The committee also received evidence from those engaged in the TRL industry indicating that, in their view, they were being treated unfairly and their rights were being compromised under the PZJA.[53] Dr Raymond Moore, a long-time fisherman in the Torres Strait, suggested that there were three types of people operating in this fishery—Papua New Guineans, community fishermen and non-community fishermen. He explained what he believed was the thinking behind approaches taken toward non-Indigenous fishing operators in the Torres Strait:

> The non-community fishermen are the only ones that we can use as a political football, so you are the ones we are going to penalise. We cannot touch Papua New Guinea and we cannot touch the community fishermen, so you are the ones who will be penalised.[54]

15.41 In its submission, the M. G. Kailis Group stated that 'A key stumbling block has been the failure to separate and address issues relating to indigenous aspirations from the implementation of good quality management that maximizes the value of the fishery to both the local and broader Australian community'.[55]

15.42 The issuing of licences and the requirement for non-Islander licence operators to be manned by someone who has a Torres Strait Master Fisherman's Licence is one of the most contentious matters.[56]

Licensing arrangements

15.43 The PZJA issues two types of commercial fishing licence based on ethnicity—Islander and non-Islander. Under this arrangement, there is a traditional inhabitant boat licence (TIB) and a transferable vessel holder licence (TVH). Non-

52 Queensland Government, answer to question on notice taken 25 March 2010.

53 See for example, *Submission 7*, p. 3.

54 *Committee Hansard*, 24 March 2010, p. 46.

55 *Submission 10*, p. 2.

56 *Submission 6*, p. 2.

Islanders may engage only in commercial fishery while Islanders may be involved in both commercial and traditional or customary fishery.[57]

Traditional inhabitant boat licence

15.44 A traditional inhabitant boat licence (TIB) is issued on application and available only to Torres Strait Islanders and to Aboriginal people from Northern Peninsula communities. Dr Moore explained that there was no cap on this fishery and any islander 'can get a licence to run a dinghy or a 20-metre boat if they want'.[58] Mr Brett Arlidge, Queensland Rock Lobster Association, noted that there are about 400 TIBs but 'only a small percentage of those are actually full-time commercial fishermen'.[59] Dr Moore indicated that 10–20 per cent would be pretty serious fishermen.[60]

Transferable vessel holder licence

15.45 Non-Islanders can obtain a transferable vessel holder licence (TVH) but there are only a limited number available. When the PZJA was established, persons who could demonstrate that they had a prior history and commitment to fishing in the Torres Strait were able to obtain a transferable licence. Dr Moore explained that 'from one year after ratification of the treaty in 1985, no more licences were issued to non-islanders'.[61] Because no new TVH licences have been allocated since the 1980s, operators wishing to gain access to the fisheries in the TSPJ must purchase an existing TVH licence. These licences apply to a specific fishery. A Torres Strait Master Fisherman's Licence is also required to operate a TVH-licenced boat.[62]

Requirement for TVH operators to have a Master Fisherman's Licence

15.46 Dr Moore explained that Islanders are not required to have a Master Fisherman's Licence to run a dinghy or a boat, although they are available to them. In contrast, non-Islanders need to have a Master Fisherman's Licence to operate a boat but they are no longer issued to them. He explained that the reason given for this requirement was to 'make sure that Islanders had to be employed in operations'. He stated:

> So suddenly this licence, which was meant to be about being in charge of a dinghy, became a political angle, if you like, for employing more Islanders. That would not be a bad concept if you could get people to work, but it is

57 TSRA *Submission 18*, pp. 21–3. PZJA website http://www.pzja.gov.au/fisheries/default.htm (accessed 11 September 2010).

58 *Committee Hansard*, 24 March 2010, p. 45.

59 *Committee Hansard*, 24 March 2010, p. 44.

60 *Committee Hansard*, 24 March 2010, p. 44.

61 *Committee Hansard*, 24 March 2010, p. 45.

62 *Submission 18*, p. 22.

> extremely hard to find people who want employment. Nobody really wants to work out at sea. Everyone is quite happy working for Centrelink or wherever.[63]

15.47 According to Dr Moore, the final decision with regard to the requirement for non-Islanders to have Master Fisherman's Licence in order to operate a boat rests with the PZJA.

Licence buyout

15.48 Another contentious area involves the buyback of fishing licences. According to the TSRA, Torres Strait Islanders have shown a strong interest in obtaining 100 per cent access to the TRL, Spanish mackerel and finfish fisheries.[64] It explained that amendments made to the TSFA in 2007 allowed the buy-back of fishing entitlements held by non-Indigenous commercial fishers in the TRL and finfish fisheries to be then transferred to the Indigenous sector. With government assistance, traditional inhabitants have achieved 100 percent ownership over the finfish industry.[65] DAFF paid $10.6 million in 2007 to complete the total (100 percent) purchase of finfish entitlements.[66]

15.49 The Queensland Government informed the committee that the main tension between the different groups was over the traditional inhabitants' aspiration to have 100 per cent ownership of the TRL resource.[67] In this regard, Mr Kris noted that the Australian Government helped initially to get 53 per cent buyback of the TRL.[68] Professor Hurry also noted that Torres Strait Islanders hold 53 per cent access with the remaining 47 per cent held by the commercial sector.[69]

15.50 According to TSRA, the TIB sector felt that '70 per cent of the total Australian allocation was a more appropriate share for Indigenous fisheries'.[70] Mr Kris noted that they had bought out some of the licences to 'look at the increase of numbers of our fishermen going into that industry'. He explained that 'for us to create that employment market through that process of owning those quotas for that industry is a direct linkage to a lot of our communities on the outer islands'.[71]

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63 *Committee Hansard*, 24 March 2010, p. 47.

64 *Submission 18*, p. 22.

65 *Committee Hansard*, 24 March 2010, p. 8.

66 *Submission 18*, pp. 22–23.

67 Queensland Government, answer to question on notice taken 25 March 2010.

68 *Committee Hansard*, 24 March 2010, p. 8.

69 *Committee Hansard*, 17 December 2009, p. 60.

70 *Submission 18*, p. 23.

71 *Committee Hansard*, 24 March 2010, p. 7.

15.51 The Queensland Government noted that the failure of the PZJA to provide a pathway to achieving the aspiration of 100 per cent ownership of the TRL by traditional inhabitants has created resentment and led traditional inhabitants to support 'the continuation of unnecessarily restrictive arrangements on the non-traditional operators'. It suggested that these arrangements 'are one of the reasons for the under-performance' of that industry.[72]

Restrictions on the non-Islander TRL fisheries

15.52 Non-Islanders engaged in the TRL fishery cited a number of impositions on fishing, including an interim measure to impose a 30 per cent reduction in non-Islander licences and additional moon phase closures which remain in place.[73] The committee has also mentioned the requirement for non-Islanders to have a Master Fisherman's Licence, which they cannot obtain.

15.53 The Queensland Rock Lobster Association stated in its submission that 'since 2007 progress on the Torres TRL Management plan and consultative process has been blocked and held to ransom by TSRA for political purposes'.[74] Mr Arlidge referred to the anger and frustration felt by many commercial industry stakeholders and operators at the lack of progress in fishery management in recent years. He said:

> Progress on the new management plan and quota system, which commenced in 2005, has been stalled completely since 2007. There is still no certainty for industry stakeholders. Many unnecessary and outdated impediments to modern efficient fishing operations are still with us, and they particularly target and affect the commercial TVH sector. The need for a cooperative, all-of-industry approach is clear, but at present constructive discussion and negotiation is still not happening. That is an issue for the industry.[75]

15.54 He informed the committee that since 2007, his industry has maintained that the remaining input controls are no longer needed and should be removed. In his view, however:

> …despite the fact that industry has put that case each year—season 2008, 2009, 2010—they have been reimposed each season. The commercial industry and the TVH operators really feel this is unfair and inequitable. I guess you could say that there has been a veto given to the TIB sector on the removal of them. Basically, some of our more upset members believe that whatever the TIB sector asks for will be provided. This is one of the burning issues that quite a few fishers are very unhappy about.[76]

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72 Queensland Government, answer to question taken on notice, 25 March 2010, p. 1.

73 *Submission 6*, p. 2.

74 *Submission 7*, p. 2.

75 *Committee Hansard*, 24 March 2010, p. 42.

76 *Committee Hansard*, 24 March 2010, p. 43.

15.55 He went on to argue that 'all these archaic input controls…actually [impede] development of the live fishery, which would deliver much more value to everyone—to the whole industry, from top to bottom'.[77]

Business plan—addressing concerns of TRL fisheries

15.56 DAFF informed the committee that a process was underway to develop a TRL business plan that would attempt to deal with the competing aspirations of the two sectors. Mr Pittar, DAFF, was aware of the efficiency concerns of the TRL sector and the fact that they were not able 'to catch the amount of lobster that they would be entitled to due to some existing input constraints'.[78] He recognised that the measures were having an 'impact on the sector' and noted that when the PZJA decided on the arrangements for the 2010 season, it 'rolled over the existing input constraints'. The PZJA has made known that it wanted this to be the last year for the constraints and for next year's arrangements to take account of the findings from a business plan.[79] According to Mr Pittar, DAFF have had a consultant working on the business plan, which has been presented to the PZJA for information and consideration. The department was expecting decisions regarding the business plan 'to be made in the future.'[80]

15.57 The intention in developing this plan was to have far more efficient and effective fishery management with modern arrangements. Mr Pittar informed the committee, however, that local traditional inhabitants 'have been uncomfortable with some of the move toward that and have issues'. In his words:

> They want to ensure that their home reefs, for example, are protected in a way that they can go out and harvest tropical rock lobster as they might need to. Again, the process I am talking about is designed, we hope, to achieve that outcome, whereby the commercial sector can work more efficiently based on output controls and the sort of protection that traditional inhabitants want for being able to harvest tropical rock lobster on home reefs, as a case in point.[81]

15.58 Acknowledging the differences in views between the non-Indigenous sector and the Indigenous sector about how the industry should be managed, he stated that the business plan would try to deal with the competing aspirations of the two sectors. He stated further:

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77 *Committee Hansard*, 24 March 2010, p. 43.

78 *Committee Hansard*, 18 June 2010, p. 36.

79 *Committee Hansard*, 18 June 2010, p. 36.

80 *Committee Hansard*, 18 June 2010, pp. 36–7. The restrictions involved the use of the number of tenders or the number of small boats that can be associated with a larger mother ship, which is around restrictions on closures associated with tides and phases of the moon.

81 *Committee Hansard*, 18 June 2010, p. 36.

> Given the joint decision-making of the PZJA if there are differences of view, then the decision making, which aims to work on a consensus basis, needs to find a pathway through those differences of view and, as a consequence, not everyone is going to get exactly what they want. The idea of this business-planning process is to allow the aspirations of each of those sectors to be put forward so that hopefully some of the arrangements that are in place to achieve a particular objective which may not be as efficient as they might otherwise be can be looked at and addressed so that more efficient fisheries management arrangements can be in place whilst the interests of Indigenous people in the region are also protected.[82]

Under-utilisation of resources

15.59 Another concern arising from the management of fisheries in the TSPZ is the current underutilization of many of the marine resources. Unlike some species such as bêche-der-mer, other fish stocks are plentiful in the Torres Strait. For example, in DEWHA's assessment, the prawn and TRL fisheries are 'generally operating at reasonably low levels of catch and are sustainable'.[83]

15.60 This underutilization occurs despite efforts to encourage greater involvement of traditional inhabitants through the buy-back of licences. For example, the Queensland Government cited the finfish industry which, it stated, has experienced a 'significant decline in effort and catches'.[84] As noted earlier, traditional inhabitants now have 100 percent ownership of the finfish industry. The 2009 performance audit of the finfish fishery management found that 'economic development in the Torres Strait as a result of the buyback has not eventuated'. It found:

> Islander participation in the Finfish Fishery has decreased since the buyback and it appears that no Islander fishers utilise the Finfish Fishery as their sole or main source of income.[85]

15.61 One major impediment is the high cost involved in developing fisheries and the lack of resources to value-add. For example, the TSRA explained:

> As the capacity does not yet exist in the Indigenous sector in the Torres Strait to take up these entitlements, finfish quotas for the 2008–2009 fishing season were sold as leases to the commercial fishing sector. The revenue raised from these leases is to be used to increase the capacity of Indigenous fishers in the Torres Strait, through training and business loan arrangements, to more profitably engage in the commercial sector.[86]

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82 *Committee Hansard*, 18 June 2010, p. 35.

83 Mr Stephen Oxley, *Committee Hansard*, 17 December 2009, p. 67.

84 Queensland Government, answer to question on notice taken 25 March 2010.

85 Australian Government *Performance Audit of Torres Strait Finfish Fishery Management*, Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, December 2009, p. 8.

86 *Submission 18*, pp. 22–23.

15.62 The Queensland Government noted that the experience with the finfish fishery is consistent with a concern for the TRL fisheries. It informed the committee that because traditional inhabitants fish from inshore reefs in small dinghies with no refrigeration, they have little ability to supply live product to the market and hence focus on delivering lobster tails. It noted that the highest returns derive from providing 'a stable supply of quality, live product'. It concluded:

> To date, even with the assistance of the TSRA, the Traditional Inhabitant sector has been unable to establish any truly commercial fishing operations that utilise either live tanks or larger offshore vessels, a factor that will significantly inhibit their ability to guarantee increased levels of product supply in the future.[87]

15.63 Professor Hurry commented on the available infrastructure on the islands which is not equipped to hold live lobsters, including 'boats required to travel around, pick the live lobsters up and bring them back to market'. He cited the TRL fishery on the east coast of Queensland where commercial operators 'land planes on beaches, fly live product out and put it on the market'. In his view:

> If they [commercial operators] knew there was a regular supply of lobsters coming out of the Torres Strait and it was worthwhile sending boats around to pick live lobsters and live finfish up, I think you would find a different structure and arrangement and the value of the fishery probably increase and people would get more active in it.[88]

15.64 He also referred to the five-year management plan for the rock lobster, which according to him, 'should begin to take us down that path'.[89]

Conclusion

15.65 The committee notes the high level of dissatisfaction with the management of commercial fisheries in the Torres Strait by the PZJA. It understands that government agencies are attempting to resolve difficulties, especially with PZJA's governance structure and its decision making processes. The committee is concerned, however, that the problems are longstanding and have been evident for some time. It understands that a review has taken place and that agencies are in the process of considering a range of options to simplify the administration of the PZJA and also of finalising a five-year TRL business plan. In light of the depth of dissatisfaction with, and the force of the criticism levelled at, the performance of the PZJA, the question must arise whether the governance and consultative mechanisms used by the authority are deeply flawed. With this in mind, the committee believes that constant and close monitoring of the performance of the PZJA is required and if no improvement is

87 Queensland Government, answer to question on notice, 25 March 2010.

88 *Committee Hansard*, 17 December 2009, p. 60.

89 *Committee Hansard*, 17 December 2009, p. 60.

discernible, then serious consideration should be given to a more root-and-branch reform of the management arrangements for commercial fisheries in the Torres Strait.

Recommendation 29

15.66 The committee recommends that DAFF monitor developments within the PZJA during the coming twelve months. Further, at the end of that period, it consult with representatives from the Indigenous and non-Indigenous fishing sectors in the Torres Strait and with the Queensland Government to ascertain whether, in their view, the PZJA is making progress in remedying the problems identified in this report. The committee recommends that DAFF prepare a report for the minister for his/her consideration and for the report to be provided to the committee.