

EXPOSURE DRAFT



EXPOSURE DRAFT (28 April 2016)

Torres Strait Fishery (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2016

I, Anne Ruston, Assistant Minister for Agriculture and Water Resources and Parliamentary Secretary to the Minister for Agriculture and Water Resources, make the following management plan.

Dated 2016

Anne Ruston [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

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

Section 1

Part 1—Introduction

Division 1—Preliminary

1 Name

This is the *Torres Strait Fishery (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2016*.

2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

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Part 1 Introduction

Division 2 Definitions

Section 4

Division 2—Definitions

4 Definitions

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

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

In this Plan:

AAT means the Administrative Appeals Tribunal.

Act means the *Torres Strait Fisheries Act 1984*.

allocation day means the day after the day that review of all decisions to provisionally allocate quota units cease to be subject to appeal.

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

available quota units, in relation to a fishing season, means the unused quota units for the fishing season.

catch history notice means a notice given to a person who holds a primary boat licence, as required by section 15.

fishing season, for a particular year, means the period specified in an instrument made under section 16 of the Act during which the taking, processing or carrying of tropical rock lobster without a TRL fishing licence is prohibited.

harvest strategy, in relation to tropical rock lobster, means the strategy determined by the Authority and existing on the day this Plan commences, that has been developed in accordance with the Commonwealth Fisheries Harvest Strategy Policy and Guidelines.

Note: The harvest strategy could in 2016 be viewed on the Authority's website (<http://www.pzja.gov.au>).

objection period means the period:

- (a) beginning on the date of the notice; and
- (b) ending on the day that occurs 14 days after the date of the notice.

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

Note: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of security interest).

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primary boat licence means a commercial fishing licence issued to a person who is not a traditional inhabitant that:

- (a) is described as a Torres Fishing Licence; and
- (b) authorises the fishing of tropical rock lobster.

provisional boat catch history, in relation to a primary boat licence, means the highest average of the annual total weight of tropical rock lobster taken in relation to the primary boat licence in any 3 fishing seasons during the 5-year period from 1997 to 2001.

provisional total catch history means the sum of each provisional boat catch history for all primary boat licences in relation to which there is a provisional boat catch history.

quota unit means a unit of fishing capacity.

Register means the Register of Quota Units for the Torres Strait Tropical Rock Lobster Fishery, required to be maintained by section 30.

tender boat licence means a commercial fishing licence that:

- (a) is described as a Torres Fishing Licence; and
- (b) is granted in respect of a boat, generally known as a tender; and
- (c) specifies a primary boat with which the tender must operate.

total allowable catch: see section 22.

TRL fishery means the area of the Australian jurisdiction described by item 9 of Schedule 2 to the *Torres Strait Fisheries Regulations 1985*.

TRL fishing licence (short for tropical rock lobster fishing licence) means a commercial fishing licence with an entry authorising the fishing of tropical rock lobster.

tropical rock lobster means all species in the family *Palinuridae*.

TSRA has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

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Part 1 Introduction

Division 3 Objectives of this Plan

Section 5

Division 3—Objectives of this Plan

5 Objectives of this Plan

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

6 Assessing objectives of this Plan

The following table sets out:

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

Assessing objectives of this Plan				
Item	Objectives	Measure	Performance criteria	Time frame
1	to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants; to manage the area of the TRL fishery for optimum utilisation to protect and preserve the marine environment to adopt conservation measures in a way that minimises restrictive effects on traditional fishing to administer Part 5 of the Torres Strait Treaty so as not to prejudice achievement of Part 4 of the Treaty in regard to traditional fishing	determining the total allowable catch (<i>TAC</i>) for a fishing season	the TAC for a fishing season is determined in accordance with section 22.	each fishing season

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Introduction **Part 1**
Objectives of this Plan

Section 6

Assessing objectives of this Plan				
Item	Objectives	Measure	Performance criteria	Time frame
	to share the total allowable catch with Papua New Guinea			
2	to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants; to manage the area of the TRL fishery for optimum utilisation to protect and preserve the marine environment to adopt conservation measures in a way that minimises restrictive effects on traditional fishing to administer Part 5 of the Torres Strait Treaty so as not to prejudice achievement of Part 4 of the Treaty in regard to traditional fishing	implementing the quota unit system	the catch of tropical rock lobster for a fishing season is at or below the total allowable catch for the fishing season	each fishing season
3	to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants; to manage the area of the TRL fishery for optimum utilisation to have regard, in developing and implementing licensing policy, to the desirability of promoting economic	allocating quota units to the traditional inhabitant sector	the Authority carries out its review	within 2 years of the day this Plan commences

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Part 1 Introduction

Objectives of this Plan

Section 6

Assessing objectives of this Plan

Item	Objectives	Measure	Performance criteria	Time frame
	development in the Torres Strait area and employment opportunities for traditional inhabitants			

Part 2—Fishing for tropical rock lobster

7 Who may fish in the TRL fishery

- (1) A person (other than a traditional inhabitant) may fish for tropical rock lobster in the TRL fishery if:
 - (a) the person holds a commercial fishing licence with an entry authorising the fishing of tropical rock lobster; and
 - (b) the person has, or has leased, available quota units.

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

- (2) A traditional inhabitant may fish for tropical rock lobster in the TRL fishery if:
 - (a) the person holds a commercial fishing licence with an entry authorising the fishing of tropical rock lobster; and
 - (b) either:
 - (i) the person has, or has leased, available quota units; or
 - (ii) the person's fishing is covered by available quota units allocated to the TSRA.
- (3) Fishing for tropical rock lobster in the TRL fishery does not include:
 - (a) carrying or transshipping tropical rock lobster on board a boat; and
 - (b) fishing activities that are specified in, and authorised by, a permit for scientific or developmental purposes.

8 Taking tropical rock lobster—unprocessed tropical rock lobster

- (1) This section applies if:
 - (a) a person takes tropical rock lobster from the TRL fishery during a fishing season but does not process it; and
 - (b) neither section 9 nor section 10 applies to the person at any time during the fishing season.
- (2) The number of kilograms of unprocessed tropical rock lobster that a person may take at a particular time during a fishing season is worked out according to the following formula:

$$\left(\text{Value of a quota unit} \times \text{the person's total number of quota units} \right) - \text{used quota units}$$

where:

the person's total number of quota units means the total number of quota units that the person has, as evidenced by the Register, at that time:

- (a) less the total number of quota units leased to another person at that time (if any); and

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Part 2 Fishing for tropical rock lobster

Section 9

- (b) plus the total number of quota units leased by the person at that time (if any).

used quota units means quota units in respect of which unprocessed tropical rock lobster has already been taken.

value of a quota unit means the value of a quota unit for the fishing season, worked out in accordance with section 21.

9 Taking tropical rock lobster—processed tropical rock lobster

- (1) This section applies if:
- (a) a person takes tropical rock lobster from the TRL fishery during a fishing season and processes it (so that only the tail of each lobster remains); and
 - (b) neither section 8 nor section 10 applies to the person at any time during the fishing season.
- (2) The number of kilograms of processed tropical rock lobster that a person may take at a particular time during a fishing season is worked out according to the following formula:

$$\left((\text{Value of a quota unit} \times \text{the person's total number of quota units}) - \text{used quota units} \right) \times \text{conversion factor}$$

where:

conversion factor means the conversion factor determined by the Minister under section 11.

the person's total number of quota units means the total number of quota units that the person has, as evidenced by the Register, at that time:

- (a) less the total number of quota units leased to another person at that time (if any); and
- (b) plus the total number of quota units leased by the person at that time (if any).

used quota units means quota units in respect of which processed tropical rock lobster has already been taken.

value of a quota unit means the value of a quota unit for the fishing season, worked out in accordance with section 21.

10 Taking tropical rock lobster—both processed and unprocessed tropical rock lobster

- (1) This section applies if:
- (a) a person takes tropical rock lobster from the TRL fishery during a fishing season; and
 - (b) some of the tropical rock lobster is processed (so that only the tail of each lobster remains); and
 - (c) the rest of the tropical rock lobster is not processed.

- (3) The number of kilograms of tropical rock lobster that a person may take at a particular time during a fishing season is worked out:
- (a) for unprocessed tropical rock lobster—by applying the formula set out in subsection 8(2); and
 - (b) for processed tropical rock lobster—by applying the formula set out in subsection 9(2);

in a way that maintains equivalent proportions of the results of the formulae.

Example: Suppose that a person can take 100 kilograms of unprocessed tropical rock lobster. Assuming a conversion factor of 0.75, the person could take 60 kilograms of unprocessed tropical rock lobster and 30 kilograms of processed tropical rock lobster.

11 Weight conversion of processed tropical rock lobster

For the purpose of working out the number of kilograms of tropical rock lobster that a person may take from the area of the TRL fishery, the Minister must determine the conversion factor to be applied if the person processes tropical rock lobster so that only the tail of a lobster remains.

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Part 3 Quota unit system

Division 1 Allocation of quota units

Section 12

Part 3—Quota unit system

Division 1—Allocation of quota units

12 Allocation of quota units—traditional inhabitant and non-traditional inhabitant sectors

- (1) On the allocation day, there are to be 1 000 000 quota units.
- (2) Of the 1 000 000 quota units:
 - (a) 562 000 quota units are allocated to the TSRA (the traditional inhabitant sector); and
 - (b) 438 000 quota units are allocated to persons other than traditional inhabitants (the non-traditional inhabitant sector).

13 Defeasibility

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

- (a) the quota unit may be cancelled, revoked, terminated or varied by or under later legislation; and
- (b) no compensation is payable if the quota unit is so cancelled, revoked, terminated or varied.

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Quota unit system **Part 3**
Allocation to the traditional inhabitant sector **Division 2**

Section 14

Division 2—Allocation to the traditional inhabitant sector

14 Review of allocation

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

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Part 3 Quota unit system

Division 3 Allocation to the non-traditional inhabitant sector

Section 15

Division 3—Allocation to the non-traditional inhabitant sector

Subdivision A—Verification of current catch histories

15 Minister to notify primary boat licence holders of catch histories

- (1) Within 28 days of the day this Plan commences, the Minister must ensure that notice is given to a person who holds a primary boat licence on the day this Plan commences of the following:
 - (a) the provisional boat catch history relating to the primary boat licence;
 - (b) the provisional total catch history.
- (2) The notice must:
 - (a) be in writing; and
 - (b) be dated; and
 - (c) state that the person may object, in writing, to the provisional boat catch history stated in the notice within the objection period, and set out the requirements for making an objection; and
 - (d) state that, if no objection is made during the objection period and the person holds the primary boat licence in respect of the first fishing season covered, wholly or partly, by this Plan, quota units will be provisionally allocated to the person taking into account the provisional boat catch history and provisional total catch history for each person who receives a notice.

16 Objection to catch histories—requirements for making objection

- (1) A person who receives a catch history notice may object to the provisional boat catch history stated in the notice.
- (2) An objection must:
 - (a) be in writing; and
 - (b) be made during the objection period; and
 - (c) set out the grounds on which the person considers the provisional boat catch history should be based, and be accompanied by evidence that supports those grounds.

17 Minister to consider objections to catch histories

The Minister must:

- (a) consider an objection to a catch history notice in accordance with the Authority's catch verification policy, as in force at the time this Plan commences; and
- (b) take into account all objections received during the objection period when provisionally allocating quota units under section 18.

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Subdivision B—Provisional allocation of quota units

18 Provisional allocation of quota units

Entitlement

- (1) A person is entitled to a provisional allocation of quota units if the person holds:
 - (a) one or more primary boat licences; or
 - (b) one or more primary boat licence and one or more tender licences.

Entitlement based on a primary boat licence

- (2) The Minister must provisionally allocate quota units to each person holding a primary boat licence in respect of the first fishing season covered, wholly or partly, by this Plan, according to the following formula:

$$\frac{350400 \times \text{Final boat catch history}}{\text{Final total catch history}}$$

where:

final boat catch history, in relation to a primary boat licence, means the highest average of the annual total weight of tropical rock lobster taken in relation to the primary boat licence in any 3 fishing seasons during the 5-year period from 1997 to 2001, taking into account all objections made to catch history notices made under section 16.

final total catch history means the sum of each provisional boat catch history for all primary boat licences in relation to which there is a provisional boat catch history, taking into account all objections made to catch history notices made under section 16.

- (3) This Minister must provisionally allocate quota units under subsection (2) within 3 months of catch history notices being given to relevant primary boat licence holders.

Entitlement based on a tender boat licence

- (4) A person holding a tender boat licence has the number of quota units worked out according to the following formula:

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

where:

total number of tender boat licences means the sum of all tender boat licences granted in respect of the first fishing season covered, wholly or partly, by this Plan.

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Part 3 Quota unit system

Division 4 Value of quota units

Section 19

Subdivision C—AAT review of provisional allocation of quota units

19 Review of provisional allocation of quota units by the AAT

An application may be made to the AAT for review of a decision by the Minister to provisionally allocate a particular number of quota units to a person under subsection 18(2).

20 Minister to be notified of application for review

- (1) If an application for a review of a decision is made under section 19, the Registrar of the AAT must, as soon as practicable, give written notice of the making of the application:
 - (a) to the Minister; and
 - (b) to each other person who was provisionally allocated quota units under subsection 18(2).
- (2) If the Minister is notified of an application for review, the Minister must ensure that, within 14 days of being so notified, the Registrar of the AAT is given a copy of:
 - (a) the reasons for the decision; and
 - (b) each other document, or part of a document, that:
 - (i) is in the possession or control of the Minister or AFMA; and
 - (ii) the Minister considers to be relevant to the review of the decision; including, if required by the AAT, documents relating to the general state of the TRL fishery.
- (3) A person to whom a notice is given under subsection (1) is a party to the proceeding before the AAT.

Division 4—Value of quota units

21 Value of quota units

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

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

where:

total allowable catch means the total allowable catch for the fishing season, as determined under section 22.

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

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

22 Determining the total allowable catch for a fishing season

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

23 Increasing the total allowable catch for a fishing season

- (1) The Minister may increase the total allowable catch it has determined for a fishing season.
- (2) Subsections 22(2) and (3) apply to determining an increase in the total allowable catch for a fishing season in the same way as they apply to the making of a determination of the total allowable catch for a fishing season.

EXPOSURE DRAFT

Part 3 Quota unit system

Division 5 Trading of quota units

Section 24

Division 5—Trading of quota units

24 Transfer of quota units

- (1) A person who has quota units may permanently transfer some or all of the quota units to another person, other than to a trust or trustee of a trust.

Example: A person who has a TRL fishing licence may sell some or all quota units to the TSRA or a new entrant to the tropical rock lobster fishing industry.

- (2) Despite subsection (1), a person may not permanently transfer any quota units if the TRL fishing licence to which the quota units relate is suspended.

25 Leasing of quota units

- (1) A person who has available quota units may lease some or all of the available quota units to another person, other than a trust.
- (2) Despite subsection (1), a person may not lease available quota units if the TRL fishing licence to which the quota units relate is suspended.
- (3) To avoid doubt, subsection (1) does not require the TSRA to lease available quota units to individual traditional inhabitants.

26 Effect of licence suspension on leased quota units

If:

- (a) a person leases quota units; and
 - (b) the TRL fishing licence to which the quota units relate is suspended;
- the person is taken not to have access to available quota units relating to the relevant TRL fishing licence at all times while it is suspended.

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Quota unit system **Part 3**
Cancellation of quota units **Division 6**

Section 27

Division 6—Cancellation of quota units

27 Cancellation of quota units

- (1) If a TRL fishing licence to which quota units relate is cancelled, the quota units are cancelled under this section.
- (2) Cancellation of the quota units takes effect on the same day that the TRL fishing licence to which quota units relate is cancelled.

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Part 4 Administrative provisions

Division 1 Notification of value of quota units

Section 28

Part 4—Administrative provisions

Division 1—Notification of value of quota units

28 AFMA to notify persons of catch entitlements each fishing season

- (1) AFMA must notify each person who has quota units for a fishing season of the following:
 - (a) the value of a quota unit for the fishing season;
 - (b) the number of kilograms of tropical rock lobster that the person may take from the area of the TRL fishery during the fishing season.
- (2) If the Minister increases the total allowable catch for a fishing season, AFMA must notify relevant persons of the matters mentioned in subsection (1) based on the increased total allowable catch for the fishing season.
- (3) A notification under this section must:
 - (a) be given for each fishing season, as soon as practicable before a fishing season begins; and
 - (b) if the total allowable catch for a fishing season is increased, as soon as practicable after the total allowable catch is increased; and
 - (c) be given within 10 business days after a permanent transfer of quota units is recorded on the Register.
- (4) A notification under this section must be given in writing.

29 AFMA to notify persons of catch entitlements if quota units are leased

- (1) Within 10 business days of a lease arrangement being recorded on the Register, AFMA must notify the lessor and the lessee of the following:
 - (a) the value of a quota unit for the fishing season to which the lease period relates;
 - (b) the number of kilograms of tropical rock lobster that the person may take from the area of the TRL fishery during the fishing season.
- (2) However, AFMA must not give notices required under subsection (1) if subsection 31(2) applies in respect of the lease.
- (3) If the Minister increases the total allowable catch for a fishing season, AFMA must, subject to subsection (2), notify the lessor and lessee of the matters mentioned in subsection (1) based on the increased total allowable catch for the fishing season.
- (4) A notification under this section must be given in writing.

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Division 2—Register of Quota Units

30 Register—establishment

- (1) AFMA is to maintain a register, to be known as the Register of Quota Units for the Torres Strait Tropical Rock Lobster Fishery, which includes:
 - (a) the names of persons who may fish for tropical rock lobster in the area of the TRL fishery; and
 - (b) other information, as required by section 31.
- (2) The Register is to be made available for inspection on request.

31 Register—required information

- (1) The Register must include the following information for each person who has quota units or access to available quota units:
 - (a) the person's name;
 - (b) the licence number for each TRL fishing licence held by the person;
 - (c) the total number of quota units held by the person;
 - (d) the number of quota units that relate to each TRL fishing licence held by the person.
- (2) The Register must record each transfer and lease of quota units unless:
 - (a) the licence to which the quota units relate is suspended; or
 - (b) a party to the transfer or lease:
 - (i) is being investigated for an offence against the Act or the regulations; or
 - (ii) has been convicted of an offence against the Act or the regulations; or
 - (c) a levy relating to a TRL fishing licence held by a party to the transfer or lease remains outstanding.
- (3) AFMA may correct, or cause to be corrected, any clerical error or obvious mistake in the Register.

32 Priority between quota unit interests and PPSA security interests

- (1) The priority between:
 - (a) quota units that are permanently transferred or leased (the *quota unit interest*), if the effect of the permanent transfer or lease is included in the Register; and
 - (b) a PPSA security interest;is as set out in the following table:

Priority between PPSA security interests and quota unit interests		
Item	If ...	then ...
1	the PPSA security interest is not	the quota unit interest has priority.

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Part 4 Administrative provisions
Division 2 Register of Quota Units

Section 32

Priority between PPSA security interests and quota unit interests

Item	If ...	then ...
	perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i>	
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the effect of the permanent transfer or lease is included in the Register before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the quota unit interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the effect of the permanent transfer or lease is included in the Register at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.

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

Note: The effect of subsection (2) is that the priority between a quota unit interest and a PPSA security interest is to be determined in accordance with this Plan rather than the *Personal Property Securities Act 2009*.

Part 5—Transitional provisions

33 Right to fish until quota units are allocated

- (1) This section applies if the allocation of quota units under this Plan occurs after the beginning of the first fishing season to which this Plan relates.
- (2) Despite anything in this Plan, a person may fish for tropical rock lobster in the area of the TRL fishery for the period:
 - (a) beginning on the first day of that first fishing season; and
 - (b) ending at the end of the day before quota units are allocated;if the person holds a fishing permit that allows fishing for tropical rock lobster in the area of the TRL fishery, subject to any conditions to which the permit is subject.
- (3) Until quota units are allocated under this Plan, the Minister may grant or transfer a fishing permit that allows fishing for tropical rock lobster in the area of the TRL fishery.