



Australian Government

**Department of Agriculture,
Water and the Environment**

Nathan Harrison
Director of Aquatic Resource Management
Department of Primary Industries and Regional Development
Locked Bag 39
Cloisters Square WA 6850

Dear Mr Harrison

I am writing to you as Delegate of the Minister for the Environment in relation to the reassessment of the Western Australian Pilbara Trap Managed Fishery (the Fishery) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In September 2020, the Western Australian Department of Primary Industries and Regional Development applied for export approval for the fishery under the EPBC Act. The application has been assessed and I have declared the fishery an approved wildlife trade operation under Part 13A of the EPBC Act for three years from the day after the date of registration of the declaration on the Federal Register of Legislation. I have also accredited the management arrangements for the fishery designed to minimise interactions with species listed under Part 13 of the EPBC Act.

The list of exempt native specimens has also been amended to allow export of product from the fishery without a permit, while the specimens are covered by the declaration as an approved wildlife trade operation. The Part 13A declaration includes conditions that were agreed by officials from both departments as areas requiring ongoing attention. These are set out at Attachment 1.

Please note that any person whose interests are affected by this decision, may make an application to the Department for the reasons for the decision and may apply to the Administrative Appeals Tribunal to have this decision reviewed. I have enclosed further information on these processes at Attachment 2.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Laura Timmins'.

Laura Timmins
Delegate of the Minister for the Environment

Handwritten initials 'JR' in blue ink, followed by the date 'January 2021'.

**Part 13A conditions to the Western Australian Department of Primary Industries and Regional Development on the approved wildlife trade operation declaration for the Western Australian Pilbara Trap Managed Fishery
January 2021**

1. Operation of the fishery will be carried out in accordance with the *management regime* under *Fish Resources Management Act 1994* (FRMA, will be replaced by the Aquatic Resources Management Act once enacted); Fish Resources Management Regulations 1995 (FRMR); FRMA Section 43 Order — *Prohibition on Commercial Fishing for Demersal Scalefish (Pilbara Area) Order 1997* and *Prohibition on Fishing by Line from Fishing Boats (Pilbara Waters) Order 2006*, and the Pilbara Trap Managed Fishery Management Plan 1992, in force under the FRMA.
2. The Western Australian Department of Primary Industries and Regional Development to inform the Department of Agriculture, Water and the Environment, of any intended material changes to the Pilbara Trap Managed Fishery management arrangements that may affect the assessment against which Environment Protection and Biodiversity Conservation Act 1999 decisions are made.
3. The Western Australian Department of Primary Industries and Regional Development to produce and present reports to the Department of Agriculture, Water and the Environment annually as per Appendix B of the 'Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition'.
4. By 31 December 2022, the Western Australian Department of Primary Industries and Regional Development, are to:
 - a) improve logbook data collection by including reporting of condition TEP status (i.e. alive, dead, unknown) at a species level.
 - b) develop TEP species identification material to provide to fishers to assist with improved species identification.
5. By 31 December 2022, the Western Australian Department of Primary Industries and Regional Development, are to:
 - a) conduct an Ecological Risk Assessment (ERA) for the Pilbara Trap Fishery, involving engagement with relevant stakeholders.
 - b) review the Northern Demersal Scalefish Resource Harvest Strategy, incorporating any relevant recommendations/outcomes from the 2021 ERA.
 - c) develop a Bycatch Action Plan for the Pilbara Trap Fishery, should the ERA identify any unacceptable risks to bycatch species (including TEPs).



Notification of Reviewable Decisions and Rights of Review¹

There is a right of review to the Administrative Appeals Tribunal (AAT) in relation to certain decisions/declarations made by the Minister, the Minister's delegate or the Secretary under Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Section 303GJ(1) of the EPBC Act provides that applications may be made to the AAT for the review of the following decisions:

- (a) to issue or refuse a permit; or
- (b) to specify, vary or revoke a condition of a permit; or
- (c) to impose a further condition of a permit; or
- (d) to transfer or refuse to transfer a permit; or
- (e) to suspend or cancel a permit; or
- (f) to issue or refuse a certificate under subsection 303CC(5); or
- (g) of the Secretary under a determination in force under section 303EU; or
- (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or
- (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.

If you are dissatisfied with a decision of a type listed above you may:

- by notice, provided in writing, request that the Minister or the Minister's delegate give you a statement in writing setting out the reasons for the decision as per section 28 of the *Administrative Appeals Tribunal Act 1975*. The Minister, or Minister's delegate may refuse to give you a statement of reasons if your application is made more than 28 days after the day on which you received this notice.
- apply to the AAT for independent merits review of the decision. The AAT undertakes *de novo* merits review. This means they take a fresh look at the facts, law and policy relating to the decision and arrive at their own decision. They decide if the decision should stay the same or be changed. They are independent of the Department.

Application for review of a decision must be made to the AAT within **28 days** after the day on which you have received the reviewable decision. However an extension of time for lodging an application may be granted by the AAT under certain circumstances. Please visit the AAT's website at <http://www.aat.gov.au/> or telephone 1800 228 333 for further information. The role of the AAT is to provide a review mechanism that is fair, just, economical, informal and quick.

Applications & Costs

Applications to the AAT are made by lodging an Application Form (Form 1). This can be found on the AAT's website at <http://www.aat.gov.au/>.

There are no strict timelines in which the AAT must review the decision, however the first conference between the parties will usually be held within 6 to 10 weeks of the application

¹ In accordance with the *Administrative Appeals Tribunal Act 1975* Code of Practice for Notification of Reviewable Decisions and Rights of Review

being lodged. The time frame for review of certain decisions can be expedited in some circumstances.

The cost of lodging an application for review is \$920 (as of 1 July 2018) (GST inclusive). You may be eligible to pay a reduced fee of \$100.00 if

- you are receiving legal aid for your application;
- you hold a health care card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veteran's Affairs that entitles the holder to Commonwealth health concessions;
- you are in prison or lawfully detained in a public institution;
- you are under 18 years of age; or
- you are receiving youth allowance, Austudy or ABSTUDY.

You may also be eligible for a reduced fee if you can demonstrate to the AAT that paying the full fee would cause you financial hardship. Further information can be found on the AAT's website. Additionally, you can access information about legal assistance at <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Commonwealthlegalfinancialassistance/Documents/LegalFinancialAssistanceInformationSheet.pdf>.

If you pay a standard application fee, most of it will be refunded if the case is resolved in your favour. The refund amount is the difference between the fee you paid and \$100. So, if you paid \$884, you get back \$784 and if you pay \$920, you get back \$820. There is no refund if you paid the lower application fee for certain taxation decisions or the reduced fee of \$100.

Contact Details

Further information or enquiries relating to the decision should be directed to:

The Director
Wildlife Trade Assessments Section
Department of Agriculture, Water and the Environment
GPO Box 858
Canberra ACT 2601
Telephone: +61 (0) 2 6274 1917
Email: sustainablefisheries@awe.gov.au

Alternatively, you may contact the AAT at their Principal Registry or the Deputy Registrar, Administrative Appeals Tribunal in your Capital City or Territory.

Administrative Appeals Tribunal
Street address: Level 6, 83 Clarence Street, Sydney
Mailing address: GPO Box 9955, Sydney, NSW 2001
T: 1800 228 333 and (02) 9276 5000
F: (02) 9276 5599
E: generalreviews@aat.gov.au
W: <http://www.aat.gov.au>

Freedom of Information Request

You may make an application under the *Freedom of Information Act 1982* (FOI Act) to access documents. Further information can be found at <http://www.environment.gov.au/foi/index.html>. Please contact the Freedom of Information Contact Officer at foi@environment.gov.au for more information.