



Australian Government
Department of the Environment

Ref: 000103926

The Hon Jaala Pulford
Minister for Agriculture
Level 16
8 Nicholson Street
East Melbourne VIC 3002

Dear Minister,

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the Victorian Scallop Dive (Port Phillip Bay) Fishery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In August 2015, Port Phillip Bay Scallops, Victoria, provided an application to the Department of the Environment seeking export approval for the Victorian Scallop Dive (Port Phillip Bay) Fishery.

The application has been assessed for the purposes of the wildlife trade provisions of Part 13A of the EPBC Act. I am pleased to advise that the assessment is now complete. The assessment report will be available on the Department of the Environment's website at: <http://www.environment.gov.au/marine/fisheries/vic/scallop-dive>.

I consider that the Victorian Scallop Dive (Port Phillip Bay) Fishery operates in line with the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*. Taking into account the management arrangements currently in place in the fishery, which include total allowable commercial catch, gear restrictions, spatial management and a requirement for biomass surveys, I have decided to amend the list of exempt native specimens to allow export of product from the Victorian Scallop Dive (Port Phillip Bay) Fishery for a period of five years until 11 December 2020.

While there are some environmental risks associated with the Victorian Scallop Dive (Port Phillip Bay) Fishery, I believe that the Victorian Department of Economic Development, Jobs, Transport and Resources has in place measures to address these issues. Officers from the Victorian Department of Economic Development, Jobs, Transport and Resources, Port Phillip Bay Scallops and this Department, have discussed and agreed to five recommendations focussing on ensuring the continuation of good management practices. These recommendations can be found at **Attachment 1**.

The Victorian Scallop Dive (Port Phillip Bay) Fishery operates in state waters and does not require accreditation under Part 13 of the EPBC Act.



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I would like to thank you for the constructive way in which your officials have approached this assessment.

Please note that any person whose interests are affected by this decision may make an application to the Department of the Environment 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.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul Murphy'.

Paul Murphy

Delegate of the Minister for the Environment

11 December 2015

Recommendations to the Victorian Department of Economic Development, Jobs, Transport and Resources and Port Phillip Bay Scallops, Victoria, on the ecologically sustainable management of the Victorian Scallop Dive (Port Phillip Bay) Fishery, December 2015

1. Operation of the fishery will be carried out in accordance with the management regime under the Victorian *Fisheries Act 1995* and the Victorian Fisheries Regulations 2009.
2. Port Phillip Bay Scallops to inform the Department of the Environment of any intended material changes to the Victorian Scallop Dive (Port Phillip Bay) Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.
3. Port Phillip Bay Scallops to produce and present reports to the Department of the Environment annually as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd edition*.
4. The Victorian Department of Economic Development, Jobs, Transport and Resources to develop precautionary fishery specific performance indicators and performance measures linked to objectives for the fishery.
5. The Victorian Department of Economic Development, Jobs, Transport and Resources to:
 - a) continue to monitor and report catch and effort data annually
 - b) continue to review stock assessments regularly and at least every three years and
 - c) adjust management arrangements as appropriate,to ensure the risk of serial and spatial stock depletion is minimised.



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Notification of Reviewable Decisions and Rights of Review¹

If you are dissatisfied with the attached decision to make, refuse, vary or revoke a declaration under 303FN of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, under section 303GJ(1) of the EPBC Act you may apply to the Administrative Appeals Tribunal (AAT) for review of the decision. An 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/> for further information.

You are also entitled to request a statement from the decision maker in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision. The decision maker must prepare and give a statement of reasons to the applicant within **28 days** of receiving the request.

Role of the AAT

The role of the AAT is to provide independent merits review of administrative decisions by affirming, varying or setting aside the decisions of Commonwealth agencies. The AAT aims to provide a review mechanism that is fair, just, economical, informal and quick.

Applications and costs

Applications to the AAT are made by lodging an Application Form (Form 1). This can be found on the AAT's website <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 6-10 weeks of the application being lodged.

The cost of lodging an application with the AAT is \$861.00 (current as at 15 August 2014).

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 pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services and Indigenous Affairs or the Department of Veterans' Affairs that certifies entitlement 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.

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



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You may also be eligible for a reduced fee if you can demonstrate to the AAT that you demonstrate financial hardship. Further information can be found on the AAT's website.

Freedom of Information Request

You may make an application under the *Freedom of Information Act 1982 (FOI Act)* to access documents relevant to this permit decision. 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.

Contact Details

Please direct any enquiries regarding this decision to:

The Director
Sustainable Fisheries Section
Department of the Environment
GPO Box 787
Canberra ACT 2601
Telephone: +61 (0) 2 6274 1917
Email: sustainablefisheries@environment.gov.au

Any enquiries regarding the review process (from within Australia) should be directed to the Deputy Registrar, Administrative Appeals Tribunal in your Capital City. Alternatively you may contact the AAT at their Principal Registry:

Administrative Appeals Tribunal
GPO Box 9955
Sydney NSW 2001
Telephone: +61 (0) 2 9391 2400 or 1300 366 700 (for country areas within Australia)
Fax: +61 (0) 2 9267 5538
Email: Principal.Registry@aat.gov.au
Website: <http://www.aat.gov.au/default.htm>

Legal Advice

You may be able to obtain legal or financial advice and assistance in relation to this permit decision from, CARE Financial Counselling, Legal Aid Commission, or the Law Society in your Capital City.

