

DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION
AND COMMUNITIES

Ref: B12/1514

To: Minister (for decision)

**COMMONWEALTH SMALL PELAGIC FISHERY – ASSESSMENT UNDER PARTS 10 AND
13 OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

Timing: To enable timely consideration of the Commonwealth Small Pelagic Fishery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Recommendation/s:

1. Note the legal options available to apply EPBC Act provisions to the Small Pelagic Fishery under Part 10 and Part 13 of the Act and the department's advice on whether a Part 10 strategic reassessment of the Fishery should be undertaken at **Attachment A**.

Noted / Please discuss

2. Agree not to pursue an agreement with the Minister administering the *Fisheries Management Act 1991* to re-assess the Commonwealth Small Pelagic Fishery under section 152 of Part 10 of the EPBC Act at this time.

Agreed / Not agreed

3. Note the department's Part 13 assessment of the Commonwealth Small Pelagic Fishery at **Attachment B**, including in relation to each of the matters you must consider in making relevant decisions under Part 13 the EPBC Act.

Noted / Please discuss

4. Endorse in principle the proposal to accredit the management regime of the Commonwealth Small Pelagic Fishery under Part 13 of the EPBC Act, with conditions and for an initial period of two weeks with the intention of subsequently accrediting for a period of two years.

Endorsed / Not endorsed

5. Accredite the management regime of the Commonwealth Small Pelagic Fishery under Part 13 of the EPBC Act, with conditions and for a period of two weeks (**Attachment C**).

Signed / Not signed

6. Endorse the proposed conditions that might apply to a two year accreditation under Part 13 at **Attachment D**.

Endorsed / Not endorsed

7. If you endorsed the proposal at (4), signed the instrument at (5) and endorsed the proposed two year conditions at (6) that you then sign the letter at **Attachment E** to Seafish Tasmania Pelagic, the company potentially significantly affected by the Part 13 accreditation conditions.

Signed / Not signed

8. Sign the letter at **Attachment F** to Senator the Hon. Joe Ludwig, Minister for Agriculture Fisheries and Forestry, advising him of your course of action.

Signed / Not signed

9. Sign the letter at **Attachment G** to the Hon Michael Egan, FAICD, Chairman of the Australian Fisheries Management Authority (AFMA), advising him of your course action and seeking AFMA's adoption of the conditions as part of its fishery management arrangements.

Minister:

Comments:



☒ Signed / Not signed

Date:

3. 9. 12

Key Points:

1. The operators of the *FV Margiris*, a 142m Lithuanian registered mid-water trawl vessel, are expected to shortly seek approval to participate in the Commonwealth Small Pelagic Fishery. The fishery is managed by the Australian Fisheries Management Agency (AFMA) under the *Fisheries Management Act 1991*. There are no similar sized vessels with onboard processing and storage capacity above 2000 tonnes currently operating in this fishery.
2. Further background information on the fishery and the management arrangements currently being applied by AFMA, and the likely operations of the *FV Margiris* are set out in Appendix 1 of **Attachment A**.
3. The vessel arrived in Port Lincoln on 30 August, and has commenced the approval processes required to permit its operations in Australian waters. Subject to approvals, the vessel could be fishing within a week.
4. In anticipation of a large mid-water trawl freezer vessel with onboard processing and storage capacity above 2000 tonnes such as the *FV Margiris*, joining the fishery, the department has considered whether an agreement to commence a new strategic reassessment of the Small Pelagic Fishery under Part 10 of the EPBC Act should be pursued with the Minister administering the *Fisheries Management Act 1991*.
5. Following its assessment contained in Table 1 of **Attachment A**, the department considers that while the introduction of a large mid-water trawl freezer vessel, such as the *FV Margiris*, may have a greater impact on protected species, the impacts on matters of National Environmental Significance are not likely to be significantly greater than last reported to the Minister under the Section 146 agreement. On this basis, the department does not consider that a strategic reassessment is necessary at this time.
6. There are, however, uncertainties around potential impacts on protected species arising from the introduction of a large mid-water trawl vessel with a large scale, onboard processing and storage capacity above 2000 tonnes that enables a vessel to remain fishing for an extended period.
7. To address these uncertainties and potential impacts, particularly on EPBC Act listed seals, dolphins and seabirds, the department considers that a precautionary approach should be taken and that additional conditions should be placed on the fishery's Part 13 accreditation. The additional conditions are designed to ensure that individual fishers operating such vessels are required to take all reasonable steps to avoid interaction with EPBC Act listed species.

8. The conditions expressly require ~~the~~ that there is an onboard observer at all times with 24 hour monitoring of fishing activity and that there is an underwater camera record of the operation of any bycatch excluder device at all times, and reviewed by an observer each day. These arrangements will apply until 1 November 2013 to enable a full year of data to be assessed to inform your decision as to whether this level of monitoring continues until the cessation of the accreditation period.
9. Under Part 13 of the EPBC Act, there are a number of matters about which you must be satisfied before making your decisions. The relevant matters you must consider and the department's advice on each matter is in Table 2 of the department's Part 13 assessment report at **Attachment B**.
10. A detailed explanation of the issues and proposed conditions can be found in Table 3 of the department's Part 13 assessment report at **Attachment B**.

Issues

11. The proposed conditions relate to the uncertainties and potential risks posed by new large scale mid-water trawl operations on protected species as described above. The department is aware of the likelihood of the *FV Margiris* owner applying to mid-water trawl in the near future.
12. The Department confirms that the Minister does not have any general power under the EPBC Act to ban the *FV Margiris* from fishing or to exclude it from the SPF. The Minister may impose conditions on the accreditation of the management plan for the SPF under Part 13. These could include conditions which restrict the particular type of fishing or the use of particular types of equipment. However, the only effect of such conditions would be to limit the extent to which a person could rely on the accredited plan to avoid committing an offence under Part 13 – that is, if the action is not provided for by and taken in accordance with the accredited plan, then, the killing or injuring a member of a listed threatened species in the SPF will be an offence.
13. The department recommends that you initially reaccredit the fishery with conditions for a period of two weeks with the intention of subsequently making a two year accreditation decision. (**Attachment C**)
14. The two week accreditation is proposed so as to enable the company a reasonable opportunity to comment on the proposed two year conditions, which you should consider before making your longer term decision.
15. Prior to the two year accreditation lapsing the department would undertake a new assessment to determine whether the fishery continued to meet the EPBC Act requirements under Part 13. That assessment would draw on any further research or data produced over the two years.
16. A letter to [REDACTED] advising [REDACTED] of your decision to accredit the fishery under Part 13 protected species provisions for an initial two week period with conditions, your intention to subsequently accredit the fishery for a longer period, and offering [REDACTED] the opportunity to comment on the proposed longer term conditions is at **Attachment E**.
17. The department's Part 13 assessment thoroughly covers the issues potentially raised by the introduction of a large mid-water trawl freezer vessel, such as the *FV Margiris*, to the Small Pelagic Fishery. In light of discussions to date, the proposed conditions represent the department's advice on what you might consider constitutes "all reasonable steps" to avoid interactions with species listed under Part 13 of the EPBC Act.

18. The conditions as proposed may be viewed as "raising the bar", and possibly lead to expectations of similar requirements being applied to other state and Commonwealth jurisdiction fisheries. However, the conditions are intended to be appropriately precautionary in light of the prospect of large scale mid-water trawl being introduced in this particular fishery. In addition, they are recommended to apply for a limited period of two years in which time additional data and research would be available to inform consideration of the conditions to be applied in the longer term. This is a precautionary approach that would not be intended to apply more broadly to other fisheries in which there is not the prospect of the introduction of much larger scale mid water trawl vessels than currently operate.
19. Under the EPBC Act you must also have regard to all relevant marine bioregional plans. In this instance the department has had regard to the marine bioregional plans for the South West and Temperate East Marine region as part of preparing its advice to you.
20. A letter to Senator the Hon. Joe Ludwig advising him of your intention to accredit the fishery under Part 13 with conditions is at **Attachment F**.
21. A letter to the Hon Michael Egan, FAICD, Chairman, AFMA advising him of your intention to accredit the fishery under Part 13 with conditions is at **Attachment G**.
22. The Department of Agriculture, Fisheries and Forestry and the Australian Fisheries Management Authority have been consulted in preparation of this advice.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Attachments

- A: Departmental advice on whether a Part 10 strategic reassessment of the Small Pelagic Fishery should be undertaken
- B: The department's *'Part 13 Assessment of the Commonwealth Small Pelagic Fishery, August 2012'*
- C: Accreditation Instrument under Part 13 for the Small Pelagic Fishery
- D: Proposed two year conditions that might apply to a two year accreditation under Part 13
- E: Letter to [REDACTED] advising [REDACTED] of your action and intentions and affording [REDACTED] the opportunity to respond
- F: Letter to Senator the Hon. Joe Ludwig advising him of your action and intentions
- G: Letter to the Hon Michael Egan, FAICD, Chairman, AFMA advising him of your action and intentions

