

DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION
AND COMMUNITIES

Ref: B12/1620

To: Minister (for noting)

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

Timing: Routine

Recommendation:

1. Note the following summary of the steps the department has undertaken in advising you on the expected introduction of a large scale mid-water fishing trawler (the *FV Margiris*) in the Small Pelagic Fishery.

Minister:

Comments:

Noted / Please discuss

Date:

Key Points:

1. The following summary: *activate Part 10 then I should be advised immediately.*
 - a. is intended to assist you in public discussions relating to your decision of 3 September 2012 to accredit the Small Pelagic Fishery (**Fishery**) for an interim period, subject to conditions under Part 13 of the EPBC Act; and
 - b. explains why, following our assessment on the current information, the department considers that you do not have available to you under the EPBC Act the power to prohibit the *FV Margiris* from fishing in the Fishery.
2. The primary test for determining the extent to which you can intervene under the EPBC Act to prevent the *FV Margiris* (to be renamed the *Abel Tasman*) from fishing in Commonwealth waters is whether the fishing activities of the vessel amount to an action that will have, or are likely to have, a significant impact on matters of national environmental significance in a Commonwealth marine area.
3. On the available evidence the department considers that this threshold test has not been met (see discussion below).
4. However, the department considers it appropriate to take a precautionary approach to address the potential impacts of the *FV Margiris*' fishing activities given the novel nature of this scale of operation in the Fishery, and has recommended instead that conditions be imposed on the Part 13 accreditation requiring the operator of the *FV Margiris* take all reasonable steps to avoid interaction with EPBC Act listed species.

Impacts on matters of national environmental significance:

5. In 2009, the impacts of actions under a proposed management plan for the Fishery were assessed by way of strategic assessment under Part 10 of the EPBC Act.

6. Section 152 of the EPBC Act provides for the conduct of a further strategic assessment of a Commonwealth managed fishery if the Minister, and the Minister administering the *Fisheries Management Act 1991* (the **Fisheries Minister**), agree that the impacts that actions in the Fishery have, will have or are likely to have on a matter of national environmental significance are significantly greater than those identified in the most recent report provided to the Minister as part of the previous strategic assessment.
7. 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 assessment of the Fishery under Part 10 of the EPBC Act should be pursued with the Fisheries Minister.
8. To assess whether a significantly greater impact on matters of national environmental significance were likely with the introduction of the *FV Margiris*, the department considered:
 - a. the spatial overlap of the Fishery with the known locations and foraging areas of listed threatened species and communities, and listed migratory species;
 - b. the potential risk to those species and ecological communities from the fishing gear expected to be used by the *FV Margiris*;
 - c. the known history of interactions between similar fishing gear types and those species and communities; and
 - d. whether any impacts of the Fishery as a whole would impact on the 'Commonwealth marine area' in a way that was significantly different from that assessed by AFMA and the department in 2009.
9. The department sought further information from the owner of the *FV Margiris* regarding the size and configurations of the gear used by the vessel which confirmed that the net sizes used by the *FV Margiris* were comparable to net sizes that have already been used in the Fishery. (The department received further information from the owner of the *FV Margiris* on 3 September 2012 indicating that the operator intends to employ seal excluder devices consistent with the conditions set out in your Part 13 accreditation).
10. On the basis of its assessment, the department considers that the impacts on matters of national environmental significance from introduction of a large mid-water trawl freezer vessel, such as the *FV Margiris* into the Fishery, are not likely to be significantly greater than last reported to the Minister under the section 146 agreement.
11. The department therefore considers that on the current information available the activities likely to be undertaken by the *FV Margiris* do not meet the threshold of having, or being likely to have, a significant impact on matters of national environmental significance under Part 3 of the EPBC Act. Consequently, the department has advised you that we consider that you do not have a general power under the EPBC Act to prevent the *FV Margiris* from fishing or to exclude it from the Fishery.

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