



**Australian Government**  
**Department of the Environment**

Ref: 000103926

The Hon Ken Baston MLC  
Minister for Fisheries  
4<sup>th</sup> floor, London House  
216 St George's Terrace  
PERTH WA 6000

Dear Minister

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

The West Coast Rock Lobster Managed Fishery was previously assessed under the international wildlife trade provisions of Part 13A of the EPBC Act in May 2013. As a result of this assessment, the then Minister for Sustainability, Environment, Water, Population and Communities declared the West Coast Rock Lobster Managed Fishery an approved wildlife trade operation under Part 13A of the EPBC Act for a period of two years, until 28 May 2015. This allowed export of product from the fishery to continue during the period of the declaration.

In March 2015, the Western Australian Department of Fisheries provided an application to the Department of the Environment seeking continued export approval for the West Coast Rock Lobster Managed Fishery.

The application has been assessed for the purposes of the wildlife trade provisions of Part 13A of the EPBC Act. The assessment took into account measures that have been developed by the Western Australian Department of Fisheries in response to the conditions and recommendations made in the 2013 export assessment under the EPBC Act.

I am pleased to advise that the assessment is now complete. The new assessment report will be available on the Department of the Environment's website at:

<http://www.environment.gov.au/topics/marine/fisheries/wa/rock-lobster>

I consider that the management arrangements for the West Coast Rock Lobster Managed Fishery meet most of the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries - 2<sup>nd</sup> Edition*. Taking into account the management arrangements currently in place in the fishery, which include total allowable commercial catch limits, an ecological risk assessment and a performance measurement system, I am satisfied that the operation of the fishery remains consistent with the objects of the wildlife trade provisions of Part 13A of the EPBC Act.

Accordingly, I have decided to declare the West Coast Rock Lobster Managed Fishery an approved wildlife trade operation until 25 May 2018. The declaration will apply only to those classes of specimens specified in the instrument of declaration, available from the department's website, and will be subject to the conditions (**Attachment A**) specified in the instrument of declaration.

Officers from the WA Department of Fisheries and the Department of the Environment have discussed key areas requiring ongoing attention. While there are some environmental risks associated with this fishery, I believe that the WA Department of Fisheries is committed to addressing these issues and has already taken proactive measures.

The management regime for the West Coast Rock Lobster Managed Fishery was most recently accredited under Part 13 of the EPBC Act, for interactions with protected species, in May 2013. A key focus of this accreditation was the increase in entanglements of migrating humpback whales in potlines from the fishery after 2011, when the fishery began transitioning to a quota management system and seasonal closures began to phase out.

The WA Department of Fisheries has worked cooperatively and collaboratively with the Department and other stakeholders since the last EPBC Act assessment to develop, implement and refine management measures to mitigate the risk of whale entanglements in the fishery. There was a significant reduction in whale entanglements in 2014 that indicates that the management measures enforced in 2014 had a positive impact in mitigating the risk for migrating whales interacting with fishing gear from the fishery. I consider it important that these measures continue to be enforced and refined as appropriate as the fishery settles into the fully implemented quota management system. To ensure this, officers from the WA Department of Fisheries and the Department of the Environment have agreed to a condition that will be applied to the reaccreditation of the fishery under Part 13 of the EPBC Act. Officers have also agreed to an additional recommendation to minimise risks in the longer term (**Attachment A**).

Subject to this condition, I am satisfied that it is unlikely that fishing operations conducted in accordance with the management regime will adversely affect the conservation status of protected species or affect the survival or recovery in nature of listed threatened species or adversely affect the conservation status of listed migratory species, cetaceans or listed marine species. I also consider that under the current management regime, operators are required to take all reasonable steps to avoid the killing or injuring of species listed under Part 13 of the EPBC Act.

I have therefore reaccredited the management regime for the West Coast Rock Lobster Managed Fishery under Part 13 of the EPBC Act. Accreditation will ensure that individual fishers operating in accordance with the current management regime are not required to seek permits if they are at risk of killing or injuring listed species in Commonwealth waters.

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



Paul Murphy

Delegate of the Minister for the Environment

25 May 2015



**Conditions on the approved wildlife trade operation declaration for the  
WA West Coast Rock Lobster Managed Fishery – May 2015**

1. Operation of the fishery will be carried out in accordance with the management regime under the *WA Fish Resources Management Act 1994* and the *WA Fish Resources Management Regulations 1995*.
2. The WA Department of Fisheries to inform the Department of the Environment of any intended material changes to the WA West Coast Rock Lobster Managed Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.
3. The WA Department of Fisheries, in its annual *Status of the fisheries and aquatic resources of Western Australia* report, to report on the fishery against performance measures that relate to its sustainability.

**Condition on the reaccreditation of the  
WA West Coast Rock Lobster Managed Fishery  
under Part 13 of the EPBC Act – May 2015**

- A. The WA Department of Fisheries to:
  - a) maintain management measures clearly directed toward minimising the impact of fishing activity on migrating whales
  - b) continue to monitor and annually review the efficacy of management measures to avoid entanglement of whales, and
  - c) implement further mitigation measures to minimise entanglements, should whale entanglement rates increase.

**Recommendation to the WA Department of Fisheries on the  
ecologically sustainable management of the  
WA West Coast Rock Lobster Managed Fishery – May 2015**

1. The WA Department of Fisheries to continue with research projects to improve understanding of whale migration patterns and sites of whale entanglements as these relate to fishing effort in the fishery.



## **Notification of Reviewable Decisions and Rights of Review<sup>1</sup>**

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.

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.

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

## **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](mailto: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](mailto: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](mailto: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.

