



# Australian Government

## Department of the Environment and Energy

Ref: 002068366

Ms Helen Kroger  
Chair  
Australian Fisheries Management Authority Commission  
GPO Box 7051,  
CANBERRA ACT 2610

Dear Ms Kroger

I am writing to you as Delegate of the Minister for the Environment in relation to the reassessment of the Commonwealth Eastern Tuna and Billfish Fishery (the ETB Fishery) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This letter also refers to the extension of export approval under the EPBC Act for the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ross Sea Exploratory Toothfish Fishery in statistical subareas 88.1 and 88.2 (the Ross Sea Fishery).

In May 2019, the Australian Fisheries Management Authority applied for export approval for the ETB 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 until 19 August 2022. The list of exempt native specimens (LENS) has also been amended to allow export of product from the ETB Fishery while the specimens are covered by the declaration as an approved wildlife trade operation.

The Part 13A declaration for the ETB Fishery includes conditions that were agreed by officials from both departments as areas requiring ongoing attention. These are set out at **Attachment 1**.

In July 2019, the Department also received a request from AFMA to extend the export approval for the Ross Sea Fishery while a submission is prepared for the combined assessment for the CCAMLR Ross Sea Fishery and the CCAMLR East Antarctic Fishery (Statistical Subareas 58.4.1 and 58.4.2). There are consistent management arrangements in place for fishing operations in both fisheries, and as such there is room for streamlining the assessments under the EPBC Act into a single assessment and reporting process.

Information attached to the request to extend export approval for the Ross Sea Fishery has been assessed and I have amended the LENS to allow export of product from the Ross Sea Fishery until 27 November 2020.

The existing Part 13 accreditations for both fisheries will remain in place based on the previous assessments of the respective management arrangements for these fisheries designed to minimise interactions with species listed under the EPBC Act.

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 black ink, appearing to read 'N Sibley', with a stylized, cursive script.

Nathan Sibley

Delegate of the Minister for the Environment  
19 August 2019

**Conditions to the Australian Fisheries Management Authority on the approved wildlife trade operation declaration for the Commonwealth Eastern Tuna and Billfish Fishery, August 2019**

1. Operation of the Commonwealth Eastern Tuna and Billfish Fishery will be carried out in accordance with *Eastern Tuna and Billfish Fishery Management Plan 2010* made under the *Fisheries Management Act 1991* (Cth).
2. The Australian Fisheries Management Authority to inform the Department of the Environment and Energy of any intended material changes to the Commonwealth Eastern Tuna and Billfish Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* (Cth) decisions are made.
3. The Australian Fisheries Management Authority to produce and present reports to the Department of the Environment and Energy annually as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*.
4. The Australian Fisheries Management Authority to consult with Department of the Environment and Energy prior to a change to the management arrangements being implemented for a CITES listed species.
5. The Australian Fisheries Management Authority to continue efforts to determine the extent of the impact of fishing in the Eastern Tuna and Billfish Fishery on shark species.
6. The Australian Fisheries Management Authority to:
  - a. ensure that the overall monitoring program for the Eastern Tuna and Billfish Fishery continues to provide sufficient data collection and analysis to meet the requirements of relevant recovery and threat abatement plans under the EPBC Act, and monitoring requirements of the Western and Central Pacific Fisheries Commission, and to implement appropriate management measures as required.
  - b. provide a summary of the monitoring program to the Department of the Environment and Energy as part of annual reporting as required by Condition 3 above.
7. The Australian Fisheries Management Authority to continue efforts to determine the extent of the impact of fishing in the Eastern Tuna and Billfish Fishery on marine turtle species.

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

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

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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

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 the Environment  
GPO Box 787  
Canberra ACT 2601  
**Telephone:** +61 (0) 2 6274 1917  
**Email:** [sustainablefisheries@environment.gov.au](mailto:sustainablefisheries@environment.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](mailto: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](mailto:foi@environment.gov.au) for more information.