Australian Government

Department of Agriculture, Water and the Environment

Mr Graeme Bolton
Deputy Director-General
Fisheries and Forestry
Department of Agriculture and Fisheries
GPO Box 46
BRISBANE QLD 4001

Dear Mr Bolton

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the Queensland Sea Cucumber Fishery (East Coast) (the Fishery) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

As you will be aware, in August 2019, the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) decided to list include species of sea cucumber or teatfish (including *Holothuria whitmaei* and *H. fuscogilva*) in Appendix II to CITES. The listing came into effect on 28 August 2020. To allow the export of these species from the Fishery, the Fishery must be declared a wildlife trade operation (WTO) under the EPBC Act.

On 20 July 2020, the Queensland Department of Agriculture and Fisheries applied for export approval for the 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 30 September 2021. The list of exempt native specimens has also been amended to allow export of product from the fishery without a permit while the specimens are covered by the declaration as an approved wildlife trade operation. The Part 13A declaration includes conditions which are set out at Attachment 1.

I have also accredited the management arrangements for the fishery designed to minimise interactions with species listed under Part 13 of 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

Stephen Oxley

Stephen Oxley
Delegate of the Minister for the Environment

25 September 2020

Attachment 1

Part 13A conditions to the Queensland Department of Agriculture and Fisheries on the approved wildlife trade operation declaration for the Queensland Sea Cucumber Fishery (East Coast) - September 2020

Relating to the harvesting of specimens that are, or are derived from fish or invertebrates, other than specimens of species listed under Part 13 and Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*, taken in the Queensland Sea Cucumber Fishery (East Coast):

Condition 1

The Queensland Department of Agriculture and Fisheries must ensure the operation of the Queensland Sea Cucumber Fishery (East Coast) is carried out in accordance with the management arrangements specified in the Queensland *Fisheries Act 1994*, Fisheries (General) Regulation 2019, Fisheries (Commercial Fisheries) Regulation 2019 and the Fisheries Declaration 2019.

Condition 2

The Queensland Department of Agriculture and Fisheries must inform the Department of Agriculture, Water and the Environment of any intended material changes to the Queensland Sea Cucumber Fishery (East Coast) management arrangements, so the Department of Agriculture, Water and the Environment can determine if these changes affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.

Condition 3

The Queensland Department of Agriculture and Fisheries must provide annual reports on the Queensland Sea Cucumber Fishery (East Coast) to the Department of Agriculture, Water and the Environment every 12 months, from the date of the approval of the wildlife trade operation. These reports must be consistent with Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition.*

Condition 4

The Queensland Department of Agriculture must design a survey to estimate population biomass and density of Black Teatfish (*Holothuria whitmaei*) in waters within the area of Queensland Sea Cucumber Fishery (East Coast) south of 19 degrees south. The proposed transect locations will be detailed in the survey design.

This fishery-independent design approach must be peer-reviewed by **31 January 2021**. The Zone 2 survey must be completed and results published by **31 July 2021**.

Condition 5

By **30 April 2021,** the Queensland Department of Agriculture and Fisheries must conduct a feasibility study for divers and/or remotely operated vehicles to conduct a fishery-independent survey of the White Teatfish (*Holothuria fuscogilva*) population in the area of Queensland Sea Cucumber Fishery (East Coast) that will:

- be suitable to estimate population biomass and density for the species;
- be peer reviewed;
- provide information to evaluate the use of survey data in a stock assessment; and
- if feasible, include a proposed date for completion and publication of survey results.

The results of the White Teatfish survey feasibility study must be made publicly available by **31 July 2021.**

Condition 6

By **30 September 2021**, the Queensland Department of Agriculture and Fisheries must complete and publish stock assessment(s) for the Black Teatfish (*Holothuria whitmaei*) and White Teatfish (*H. fuscogilva*) in the Queensland Sea Cucumber Fishery (East Coast). The stock assessment for Black Teatfish must be based on the results of the survey undertaken as part of Condition 4.

Condition 7

By **30 September 2021**, the Queensland Department of Agriculture and Fisheries are to:

a. maintain the Total Allowable Catch for White Teatfish (*Holothuria fuscogilva*) in the Queensland Sea Cucumber Fishery (East Coast) at no more than 53 tonnes;

b. maintain the Total Allowable Catch for Black Teatfish (*Holothuria whitmaei*) in the Queensland Sea Cucumber Fishery (East Coast) at no more than 30 tonnes; and,

c. provide a report to the CITES Scientific Authority of Australia, as part of the annual reporting referred to in Condition 3, on the amount of Black Teatfish and White Teatfish harvested in the Queensland Sea Cucumber Fishery (East Coast) by weight, the number of individuals and locations of harvest.

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Attachment 2

Notification of Reviewable Decisions and Rights of Review[1]

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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[1] 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 Agriculture, Water and the Environment
GPO Box 858
Canberra ACT 2601
Telephone: +61 (0) 2 6274 1917
Email: 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
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@awe.gov.au for more information.