



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 ongoing environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for two Commonwealth commercial fisheries.

The Australian Fisheries Management Authority (AFMA) recently applied for export approval for the Southern Bluefin Tuna Fishery (the SBT Fishery) and the Western Tuna and Billfish Fishery (the WTB Fishery) under the EPBC Act.

These applications have now been assessed and I have agreed to declare these two fisheries as approved wildlife trade operations under Part 13A of the EPBC Act for three years, respectively, until 11 November 2022. These approvals are subject to conditions agreed by officials from both departments as areas requiring ongoing attention (**Attachments 1 and 2**).

I consider that these fisheries operate in line with the Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*. Given the management arrangements and precautionary measures in place in each fishery, I have decided to amend the list of exempt native specimens to allow export of product from these fisheries while the specimens are covered by the above-mentioned declarations as approved wildlife trade operations.

The management regimes for these two fisheries are currently accredited under Part 13 of the EPBC Act, for interactions with protected species. I am satisfied that it remains unlikely that fishing operations conducted in accordance with the respective management regimes 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 regimes, operators are required to take all reasonable steps to avoid the killing or injuring of species listed under Part 13 of the EPBC Act.

Please note that any person whose interests are affected by these decisions 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 3**.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'N Sibley'.

Nathan Sibley

Delegate of the Minister for the Environment
15 November 2019

Conditions to the Australian Fisheries Management Authority on the approved wildlife trade operation declaration for the Commonwealth Southern Bluefin Tuna Fishery - November 2019

1. Operation of the Southern Bluefin Tuna Fishery will be carried out in accordance with the *Southern Bluefin Tuna Fishery Management Plan 1995* in force 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 Southern Bluefin Tuna Fishery's management arrangements that may affect the assessment against which EPBC Act 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 management arrangements for the Southern Bluefin Tuna Fishery to implement catch monitoring technologies which provide a high degree of confidence in the estimates of southern bluefin tuna catch in the purse seine sector.
5. The management arrangements for the Southern Bluefin Tuna Fishery to begin accounting for all sources of mortality for southern bluefin tuna in Australian waters (commercial, Indigenous and recreational), following the delivery of the results of the national survey of recreational fisher effort, catch, release and harvest estimates of southern bluefin tuna by the Department of Agriculture.
6. The management arrangements for the Southern Bluefin Tuna Fishery to continue to implement all relevant measures agreed by the Commission for the Conservation of Southern Bluefin Tuna in the fishery, to the extent that these are within the remit of the Australian Fisheries Management Authority, to support the recovery of the southern bluefin tuna stock to ecologically sustainable levels.

Conditions to the Australian Fisheries Management Authority on the approved wildlife trade operation declaration for the Commonwealth Western Tuna and Billfish Fishery - November 2019

1. Operation of the Commonwealth Western Tuna and Billfish Fishery will be carried out in accordance with the *Western Tuna and Billfish Fishery Management Plan 2005* in force 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 Western Tuna and Billfish Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* 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 on shark species, and to make demonstrable progress in improving the status of shark bycatch in the Western Tuna and Billfish Fishery.
6. The Australian Fisheries Management Authority, in collaboration with the Department of Agriculture, to work with the Indian Ocean Tuna Commission in relation to improving understanding of the status for stocks currently classified as overfished or uncertain.



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Attachment 3

Notification of Reviewable Decisions and Rights of Review¹

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/>.

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

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.

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

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@environment.gov.au for more information.