



Australian Government
Department of the Environment

Ref: 000103926

The Hon Ken Baston MLC
Minister for Fisheries
7th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

I am writing to you as Delegate of the Minister for the Environment in relation to the reassessment of the Western Australian (WA) Temperate Demersal Gillnet and Demersal Longline Fisheries under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

These fisheries were most recently assessed under the international wildlife trade provisions of Part 13A of the EPBC Act in August 2012. The then Minister for Sustainability, Environment, Water, Population and Communities subsequently declared these fisheries as approved wildlife trade operations under Part 13A of the EPBC Act for a period of three years, until 28 August 2015. This allowed export of product from these fisheries to continue during the period of the declaration.

In June 2015, the WA Department of Fisheries provided an application to the Department of the Environment seeking continued export approval for these fisheries.

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 WA Department of Fisheries in response to the conditions and recommendations made in the 2012 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/marine/fisheries/wa/temperate-shark>

I consider that the management arrangements for the WA Temperate Demersal Gillnet and Demersal Longline Fisheries meet most of the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*. Taking into account:

- the management arrangements currently in place in the fishery, which include limits on fishing effort, gear and size restrictions, vessel monitoring systems and ecological risk assessment, and
- the *Non-Detriment Finding for the export of shark species listed in the Convention on the International Trade in Endangered Species of Flora and Fauna (CITES) and harvested from Australian waters* made by Australia's Scientific Authority for Marine Species for CITES in 2014,

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.



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I am also satisfied that the operation of these fisheries over the period of the declaration as approved wildlife trade operations is unlikely to be detrimental to the survival or conservation status of any taxon to which the fisheries' operations relate, including any CITES listed taxon, or threaten any relevant ecosystem.

Accordingly, I have decided to declare the WA Temperate Demersal Gillnet and Demersal Longline Fisheries as approved wildlife trade operations until 24 August 2018. The declarations 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 1**) specified in the instrument of declaration.

The assessment considered the possible impacts on hammerhead sharks which are harvested in these fisheries and which are listed in the Appendices to CITES. As a party to CITES, Australia must apply all CITES provisions of the EPBC Act to CITES imports and exports as appropriate. Specimens of species listed in Appendix II or Appendix III of CITES may be exported commercially under a CITES export permit, if sourced from an approved wildlife trade operation and a non-detriment finding has been made by the exporting country's CITES Scientific Authority. Inclusion of CITES specimens in the list of exempt native specimens is not possible due to international obligations to monitor trade. Under the EPBC Act, individual exporters are required to apply for CITES export permits and export of CITES specimens may only occur where a permit has been issued by Australia's CITES Management Authority (Department of the Environment).

Officers from the WA Department of Fisheries and the Department 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 WA Department of Fisheries and the Department's officers have agreed to additional recommendations (**Attachment 1**) to be implemented before the next Australian Government assessment of these fisheries.

The management regime for these fisheries was most recently accredited under Part 13 of the EPBC Act for interactions with protected species in August 2012. A key focus of this accreditation sought effective measures to reduce the risk of fatal interactions between these fisheries and Australian sea lions, a species listed as threatened under the EPBC Act.

The WA Department of Fisheries has worked cooperatively and collaboratively with the Department and other stakeholders since the last EPBC Act assessment to develop management measures to mitigate the risk of Australian sea lions interacting with these fisheries. The next important step will be to implement these measures, i.e., the gillnet exclusion zones around Australian sea lion breeding colonies proposed by the WA Department of Fisheries. 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 1**).



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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 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.

I have therefore reaccredited the management regimes for these fisheries under Part 13 of the EPBC Act. Accreditation will ensure that individual fishers operating in accordance with the current management regimes 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

A handwritten signature in blue ink, appearing to read 'Paul Murphy'.

Paul Murphy

Delegate of the Minister for the Environment

26 August 2015

**Conditions on the approved wildlife trade operation declaration for the
WA Temperate Demersal Gillnet and Demersal Longline Fisheries – August 2015**

1. Operation of these fisheries 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 these fisheries' 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 reports of the fisheries and aquatic resources of Western Australia*, to report on these fisheries against performance measures that relate to their sustainability.

**Condition on the reaccreditation of the
WA Temperate Demersal Gillnet and Demersal Longline Fisheries
under Part 13 of the EPBC Act – August 2015**

- A. The WA Department of Fisheries to:
 - a) implement an effective network of gillnet exclusion zones to protect foraging Australian sea lions by no later than mid 2016
 - b) continue to monitor and annually review fishing effort within the foraging range of Australian sea lions and report on likely encounters, and
 - c) implement further mitigation measures to minimise interactions, should encounter rates increase outside the gillnet exclusion zones.

**Recommendation to the WA Department of Fisheries on the
ecologically sustainable management of the
WA Temperate Demersal Gillnet and Demersal Longline Fisheries – August 2015**

1. The WA Department of Fisheries to continue to undertake or support research projects to improve understanding of Australian sea lion movements and populations in these fisheries, to better inform the predictability of encounters.
2. The WA Department of Fisheries to continue to work cooperatively with the WA Department of Parks and Wildlife to ensure fishing impacts on Australian sea lions are minimised.
3. The WA Department of Fisheries to continue to refine and implement strategies to rebuild sandbar and dusky shark.
4. The WA Department of Fisheries to review and update the Ecologically Sustainable Development report for the WA TDGDLFs. The updated report should apply to target species, byproduct, bycatch (including protected species) and impacts on the marine environment.
5. The WA Department of Fisheries to:
 - a) further facilitate measures to improve species specific identification of hammerhead sharks in logbooks, and
 - b) facilitate improved reporting of discarded hammerhead sharks.



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Notification of Reviewable Decisions and Rights of Review¹

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.

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



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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.

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 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

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
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.