



Australian Government
Department of the Environment

Ref: 001047382

Senator the Hon Anne Ruston
Assistant Minister for Agriculture and Water Resources
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

Dear Minister

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

The SESSF was most recently assessed under the international wildlife trade provisions of Part 13A of the EPBC Act in February 2013. The then Minister for Sustainability, Environment, Water, Population and Communities subsequently declared the SESSF an approved wildlife trade operation under Part 13A of the EPBC Act for a period of three years, until 25 February 2016. This allowed export of product from the fishery to continue during the period of the declaration.

In December 2015, the Australian Fisheries Management Authority (AFMA) provided an application to the Department of the Environment seeking continued export approval for the SESSF.

The application has been assessed for the purposes of the wildlife trade provisions of Part 13A and the protected species provisions of Part 13 of the EPBC Act. The assessment took into account measures that have been developed by AFMA in response to the conditions and recommendations made in the 2013 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/commonwealth/scalefish>

Assessment under Part 13A

I consider that the management arrangements for the SESSF 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 total allowable catch limits for key species, limited entry, gear restrictions, spatial closures and ecological risk assessment and management reviews, 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.

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

Accordingly, I have decided to declare the SESSF an approved wildlife trade operation until 21 February 2019. 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 1**) specified in the instrument of declaration.

The assessment considered the possible impacts on shark species that are taken as incidental catch in the SESSF 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. 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 AFMA and the Department have discussed key areas requiring ongoing attention. While there are some environmental risks associated with this fishery, I believe that AFMA is committed to addressing these issues and has already taken proactive measures.

AFMA and the Department's officers have agreed to additional recommendations (**Attachment 2**) to be implemented before the next Australian Government assessment of the fishery.

Assessment under Part 13

The management plan for the SESSF was most recently accredited under Part 13 of the EPBC Act, for interactions with protected species, in February 2013. 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 (excluding conservation dependent species).

I have therefore reaccredited the management plan for the SESSF under Part 13 of the EPBC Act, subject to the conditions at **Attachment 3**. Accreditation will ensure that individual fishers operating in accordance with the current management plan 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

22 February 2016

Conditions on the approved wildlife trade operation declaration for the Southern and Eastern Scalefish and Shark Fishery – February 2016

1. Operation of the Southern and Eastern Scalefish and Shark Fishery will be carried out in accordance with the management arrangements in force under the *Fisheries Management Act 1991*.
2. The Australian Fisheries Management Authority (AFMA) to inform the Department of the Environment of any intended material changes to the Southern and Eastern Scalefish and Shark Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.
3. AFMA to produce and present reports to the Department of the Environment annually as per Appendix B of the 'Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition'.
4. AFMA to:
 - a) ensure that management measures are in place to meet the objectives of the rebuilding strategies and management strategies for species listed as conservation dependent under the *Environment Protection and Biodiversity Conservation Act 1999*, and
 - b) continue to evaluate and report to the Department on the effectiveness of rebuilding strategies and management strategies for conservation dependent listed species.
5. AFMA to:
 - a) continue regular review of ecological risk assessments in the SESSF, ensuring that the cumulative impact of all Commonwealth commercial fisheries in the area is taken into account, and
 - b) implement management actions to address and mitigate risks and impacts for species that are identified as high risk.

**Recommendations to AFMA on the ecologically sustainable management of the
Southern and Eastern Scalefish and Shark Fishery – February 2016**

1. AFMA to determine the extent of the impact of fishing on non target shark species, including seeking to identify the species impacted, and develop management actions to mitigate the impact for non target shark species that are identified as high risk through the Ecological Risk Assessment process.
2. AFMA to consult with the Department in the development and finalisation of the eastern redfish rebuilding strategy.
3. AFMA to consider further promotion of best practice management of unwanted fishing gear within the Commonwealth Trawl Sector

Conditions on the Part 13 accreditation for the Southern and Eastern Scalefish and Shark Fishery – February 2016

A. AFMA to:

- a) maintain management measures clearly directed toward limiting the impact of fishing activity on Australian sea lions to levels which will assist in enabling the recovery of the species, including all subpopulations
- b) continue to monitor and review the adequacy of its Australian sea lion management measures, in consultation with marine mammal experts.

B. AFMA to continue to collect and report on dolphin interactions, where possible to species level, and continue to refine management measures to minimise the bycatch of dolphins in gillnets. This should include ongoing monitoring and review of these measures, in consultation with marine mammal experts.

C. AFMA to continue to work with industry and relevant experts to develop and implement management measures to minimise mortality of seals in the Commonwealth Trawl Sector of the fishery.

D. AFMA to:

- a) ensure efficient and effective Seabird Management Plans remain in place for Commonwealth Trawl Sector and Gillnet Hook and Trap sector automatic longline vessels.
- b) ensure adequate monitoring is in place to ensure compliance with Seabird Management Plans, and
- c) implement management measures to address the risk of interactions with seabirds in the Commonwealth Trawl Sector and for Gillnet Hook and Trap sector automatic longline vessels. This should include implementing bycatch devices and/or offal management measures that have been demonstrated to be highly effective in reducing seabird mortality.



Australian Government

Department of the Environment

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

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.