



Australian Government

Department of the Environment and Energy

Ref: 002068367

Mr Graeme Bolton
Deputy Director-General Fisheries and Forestry
Queensland 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 assessments of the Queensland Blue Swimmer Crab and Mud Crab fisheries under Part 13 and Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In August 2018 the Queensland Department of Agriculture and Fisheries applied for export approval for the two fisheries under the EPBC Act.

The applications have been assessed and I have declared both fisheries to be approved wildlife trade operations under Part 13A of the EPBC Act until 27 May 2022. The list of exempt native specimens has also been amended to allow export of product from the fisheries while the specimens are covered by the declaration of the fisheries as approved wildlife trade operations. The Part 13A declaration includes conditions ([Attachment 1 and 2](#)) that were agreed by officials from both departments as areas requiring ongoing attention.

I am also satisfied the management arrangements for the fisheries meet the requirements under Part 13 of the Act and I propose to accredit the management arrangements accordingly subject to conditions outlined at [Attachment 1 and 2](#).

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 3](#).

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Gibbs'.

John Gibbs

Delegate of the Minister for the Environment
28 May 2019



Conditions on the approved wildlife trade operation declaration for the Queensland Blue Swimmer Crab Fishery, May 2019

1. Operation of the Queensland Blue Swimmer Crab Fishery will be carried out in accordance with the management regime in force under the *Fisheries Act 1994* (Queensland) and *Fisheries Regulations 2008* (Queensland).
2. The Queensland Department of Agriculture and Fisheries to inform the Department of the Environment and Energy of any intended material changes to the Queensland Blue Swimmer Crab Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.
3. The Queensland Department of Agriculture and Fisheries 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 Queensland Department of Agriculture and Fisheries to develop and publish Level 2 ecological risk assessments (ERAs) according to the Queensland Government ERA guidelines, and implement appropriate risk mitigation strategies by 2021.

All precautionary risk management strategies should be developed and implemented in consultation with relevant experts and stakeholders, and performance should be monitored and reported annually in accordance with **Condition 3**.

5. The Queensland Department of Agriculture and Fisheries to implement a harvest strategy that monitors and manages impacts associated with the Blue Swimmer Crab Fishery on target, byproduct and bycatch (including protected species), by the end of 2019 for implementation in the 2020 fishing season.

The harvest strategy must include decision rules and reference points that trigger management actions to ensure the fishery remains ecologically sustainable.

Performance against this strategy must be included in annual reports specified at **Condition 3**.

6. By January 2020 the Queensland Department of Agriculture and Fisheries to implement foundational reforms (actions 1.1-1.4) identified in the Queensland Government's Sustainable Fisheries Strategy 2017–2027 for the Blue Swimmer Crab Fishery, and collect sufficient accurate and reliable data to monitor and assess the fishery's impact on target and non-target species, including protected species, with a high degree of confidence.
7. The Queensland Department of Agriculture and Fisheries progress the development and implementation of an independent data collection and validation program including:
 - a. Assess feasibility and complete proof of concept trials for electronic monitoring by December 2019.
 - b. Implement an independent data collection and validation program in the Blue Swimmer Crab Fishery from January 2021 (this may include electronic monitoring or alternative interim solutions).

Part 13 Conditions for the Queensland Blue Swimmer Crab Fishery, May 2019

1. The Queensland Department of Agriculture and Fisheries to:

- a. Develop risk mitigation strategies for marine turtles (identified as 'high' risk in the Level 1 assessment completed in 2019) by January 2021. Mitigation strategies to be implemented in parallel with the development of a harvest strategy for the fishery.
- b. Develop and publish Level 2 ecological risk assessments (ERAs) according to the Queensland Government ERA guidelines, and implement appropriate risk mitigation strategies.

All precautionary risk management strategies should be developed and implemented in consultation with relevant experts and stakeholders, and performance should be monitored and reported annually to the Department of Environment and Energy.

2. Queensland Department of Agriculture and Fisheries to continue to work with crab fishery stakeholders to:

- a. Implement the relevant plans under Queensland's Sustainable Fisheries Strategy 2017–2027 to improve monitoring and reporting of protected species interactions by fishers in the commercial sector; and
- b. Implement a system to independently validate commercial fishery interactions with protected species.



Conditions on the approved wildlife trade operation declaration for the Queensland Mud Crab Fishery, May 2019

1. Operation of the Queensland Mud Crab Fishery will be carried out in accordance with the management regime in force under the *Fisheries Act 1994* (Queensland) and *Fisheries Regulations 2008* (Queensland).
2. The Queensland Department of Agriculture and Fisheries to inform the Department of the Environment and Energy of any intended material changes to the Queensland Mud Crab Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.
3. The Queensland Department of Agriculture and Fisheries 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 Queensland Department of Agriculture and Fisheries to develop and publish Level 2 ecological risk assessments (ERA) according to the Queensland Government ERA guidelines, and implement appropriate risk mitigation strategies by 2021.

All precautionary risk management strategies should be developed and implemented in consultation with relevant experts and stakeholders, and performance should be monitored and reported annually in accordance with **Condition 3**.

5. The Queensland Department of Agriculture and Fisheries to implement a harvest strategy that monitors and manages impacts associated with the Mud Crab Fishery on target, byproduct and bycatch (including protected species), by the end of 2019, for implementation in 2020.

The harvest strategy must include decision rules and reference points that trigger management actions to ensure the fishery remains ecologically sustainable.

Performance against this strategy must be included in annual reports specified at **Condition 3**.

6. By January 2020 the Queensland Department of Agriculture and Fisheries to implement foundational reforms (actions 1.1-1.4) identified in the Queensland Government's Sustainable Fisheries Strategy 2017–2027 for the Mud Crab Fishery, and collect sufficient accurate and reliable data to monitor and assess the fishery's impact on target and non-target species, including protected species, with a high degree of confidence.

7. The Queensland Department of Agriculture and Fisheries progress the development and implementation of an independent data collection and validation program including:

- a. Assess feasibility and complete proof of concept trials for electronic monitoring by December 2019.
- b. Implement an independent data collection and validation program in the Mud Crab Fishery from January 2021 (this may include electronic monitoring or alternative interim solutions).

Part 13 Conditions for the Queensland Mud Crab Fishery, May 2019

1. The Queensland Department of Agriculture and Fisheries to:

- a. Develop risk mitigation strategies for marine turtles (identified as 'high' risk in the Level 1 assessment completed in 2019) by January 2021. Mitigation strategies to be implemented in parallel with the development of a harvest strategy for the fishery.
- b. Develop and publish Level 2 ecological risk assessments (ERA) according to the Queensland Government ERA guidelines, and implement appropriate risk mitigation strategies.

All precautionary risk management strategies should be developed and implemented in consultation with relevant experts and stakeholders, and performance should be monitored and reported annually to the Department of Environment and Energy.

2. Queensland Department of Agriculture and Fisheries to continue to work with crab fishery stakeholders to:

- a. Implement the relevant plans under Queensland's Sustainable Fisheries Strategy 2017–2027 to improve monitoring and reporting of protected species interactions by fishers in the commercial sector; and
- b. Implement a system to independently validate commercial fishery interactions with protected species.



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 Administrative Appeals Tribunal (**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 <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 time frame for review of certain decisions can be expedited in some circumstances.

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 here <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.