



Australian Government
Department of Climate Change, Energy,
the Environment and Water

Mr Nathan Harrison
Director Aquatic Resource Management
Western Australian Department of Primary Industries and Regional Development
1 Nash Street, Perth, WA, 6000

Dear Mr Harrison

I am writing to you as Delegate of the Minister for the Environment and Water in relation to the recent assessment of Western Australian Marine Aquarium Fish Managed Fishery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

As you will be aware on 27 October 2022, I declared the fishery as an approved wildlife trade operation (WTO) under Part 13A of the EPBC Act. This approval was contingent on eight conditions being met by WA DPIRD during the period of the approval (see **Attachment A**). As part of this process, I also accredited the fishery's management regime under Part 13 of the EPBC Act, with this approval contingent on a single condition being met by WA DPIRD (**Attachment B**).

Since granting this approval, I have become aware the existing Part 13A instrument inadvertently omits a reference to the Marine Aquarium Fish Managed Fishery Management Plan 2018 and the aquaculture exemptions granted in accordance with the *Western Australian Fish Resources Management Act 1994* (WA). In order to avoid any confusion over the scope of the Part 13A accreditation, I have exercised my power as the Minister's Delegate to revoke the previous Part 13A instrument and replace it with a version that makes specific reference to the fishery management plan and the aquaculture exemptions. The updated instrument can be found at <https://www.dcceew.gov.au/environment/marine/fisheries/wa/marine-aquarium>.

While this amendment is administrative in nature, it will make it clear the Part 13A covers the export of species taken by both the wild harvest and aquaculture sectors in the fishery. The new instrument will come into force on 3 November 2022, at which time the existing instrument will expire. This will ensure a seamless transition between the two instruments and no gap in coverage for exporters.

I look forward to working with WA DPIRD to progress the conditions over the term of the new wildlife trade operation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Sincock'.

Adam Sincock
Principal Director
Wildlife Trade Office
Delegate of the Minister for the Environment and Water
2 November 2022

DCCEEW.gov.au

John Gorton Building - King Edward Terrace, Parkes ACT 2600 Australia
GPO Box 3090 Canberra ACT 2601 ABN: 63 573 932 849

Part 13A Conditions on the approved Wildlife Trade Operation declaration for the Western Australian Marine Aquarium Fish Managed Fishery – October 2022

Condition 1:

Operation of the Western Australian Marine Aquarium Fish Managed Fishery must be carried out in accordance with the management regime implemented under the *Fish Resources Management Act 1994* (WA), the *Fish Resources Management Regulations 1995* (WA), the *Marine Aquarium Fish Managed Fishery Management Plan 2018*, or under the authority of an Exemption granted in accordance with Section 7 of the *Western Australian Fish Resources Management Act 1994* (WA).

Condition 2:

The Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the Western Australian Marine Aquarium Fish Managed Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.

Condition 3:

The Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval.

Condition 4:

The Western Australian Department of Primary Industries and Regional Development must produce and present annual reports to the Department of Climate Change, Energy, the Environment and Water, by December as per Appendix B of the '*Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*'.

Condition 5:

By 1 July 2023, the West Australian Department of Primary Industries and Regional Development must implement improved reporting requirements for coral species listed under the Convention on International trade in Endangered Species of Wild Fauna and Flora. The new reporting requirements must include:

- a) the recording of all coral harvests at the species level (except for those species specifically listed at genus-level in Attachment A), including any species taken for broodstock, public aquarium, or research purposes
- b) the location of all coral harvests in the fishery, reported by relevant 10 nautical mile by 10 nautical mile management block number
- c) the total weight (in kilograms) of coral by species (or genus for those species listed at that level in Attachment A) and the number of pieces that comprise the total weight.

A summary of the data collected through this process must be provided on an annual basis to the Australian Convention on International Trade in Endangered Species of Wild Fauna and Flora Scientific Authority as part of the annual report referred to in Condition 4.

Condition 6:

Consistent with the 'Expert Advice for the Assessment of Australian Coral Fisheries – Western Australia Marine Aquarium Fishery 2008–2020' report (Pratchett 2022), the Western Australian Department of Primary Industries and Regional Development must:

- a) by 1 July 2023, limit the annual take of species of hard corals from the fishery, including any species taken for broodstock, public aquarium, or research purposes, as described in Attachment B
- b) by 1 July 2023, limit the annual take of hard corals from the fishery, including any species taken for broodstock, public aquarium, or research purposes, to 200% of the average harvest level taken during the 2008-2013 historical reference period, or 600 kg (whichever is greater), for all other species of hard corals with a catch history in the fishery during the reference period
- c) where the catch of any species of hard coral within a ten nautical mile by ten nautical mile management block exceeds 200 kg in a single fishing season, implement localised monitoring of stock status and trends to assess and prevent the risk of localised depletion. Within 6 months of such an event being verified, commence localised monitoring of stock status and trends for that block and species. Within 12 months of the commencement of monitoring, provide the Department of Climate Change, Energy, the Environment and Water, with a report detailing the outcomes of the localised monitoring and any associated management responses.
- d) ensure these limits remain in place until the West Australian Department of Primary Industries and Regional Development provides scientifically robust data to the Convention on International trade in Endangered Species of Wild Fauna and Flora Scientific Authority to underpin a revised Non-Detriment Finding (as set out in condition 7).

Condition 7:

The precautionary harvest limits described in condition 6 must be maintained until there is enough information to establish sustainable harvest limits and justify any increases in harvest levels. This would need to include:

- a) fishery-independent surveys for the associated hard coral species, including comprehensive data on the distribution, biomass, and harvest locations to clearly identify the effects of fishing and any risks of localised depletion
- b) implementation of arrangements to improve spatial monitoring in the fishery to ensure the harvest strategy and stock assessments are supported by up-to-date scientific information
- c) robust stock assessments for the associated hard coral species.

Condition 8:

The Western Australian Department of Primary Industries and Regional Development must:

- a) by 1 December 2024, undertake and deliver a fishery independent survey of the commercially fished area of *Hippocampus subelongatus* to produce biomass data, identify key harvest locations and identify any risks of localised depletion
- b) by 1 July 2025, identify and publish any required changes to the management arrangements for *Hippocampus subelongatus*, including harvest limits, based on the data collected from the fishery independent survey.

Condition Attachment A

Hard coral (order Scleractinia) taxa where identification to genus level is acceptable but should be identified to species level where feasible. All other hard corals should be recorded to species.

- *Acropora*
- *Alveopora*
- *Astreopora*
- *Balanophyllia*
- *Barabattoia*
- *Blastomussa*
- *Caulastraea*
- *Coscinaraea*
- *Cycloseris*
- *Cyphastrea*
- *Dendrophyllia*
- *Echinophyllia*
- *Echinopora*
- *Echinopora*
- *Favites*
- *Fungia*
- *Goniastrea*
- *Goniopora*
- *Hydnophora*
- *Leptastrea*
- *Leptoseris*
- *Lobophyllia*
- *Montastrea*
- *Montipora*
- *Oxypora*
- *Pachyseris*
- *Pavona*
- *Pectinia*
- *Platygyra*
- *Pocillopora*
- *Porites*
- *Psammocora*
- *Seriatopora*
- *Stylophora*
- *Symphyllia*
- *Turbinaria*

Harvest limits (kg) for coral species of concern.

Taxa	Annual harvest limit (kg)
<i>Fimbriaphyllia ancora*</i>	707
<i>Euphyllia glabrescens*</i>	600
<i>Fimbriaphyllia paraancora*</i>	600
<i>Lobophyllia hemprichii</i>	600
<i>Micromussa cf. lordhowensis</i>	600
<i>Homophyllia cf. australis</i>	600
<i>Duncanopsammia axifuga*</i>	760
<i>Trachyphyllia geoffroyi</i>	836
<i>Catalaphyllia jardinei*</i>	600
<i>Moseleya latistellata</i>	600
<i>Australophyllia wilsoni</i>	600

* Species subject to negative opinion by EU SRG for CITES

Part 13 Conditions on the Accreditation of Management Regime for the Western Australian Marine Aquarium Fish Managed Fishery – October 2022

Part 13 Condition A

The Western Australian Department of Primary Industries and Regional Development must:

- a) by 1 December 2024, undertake and deliver a fishery independent survey of the commercially fished area of *Hippocampus subelongatus* to produce biomass data, identify key harvest locations and identify any risks of localised depletion
- b) by 1 July 2025, identify and publish any required changes to the management arrangements for *Hippocampus subelongatus*, including harvest limits, based on the data collected from the fishery independent survey.

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:

1. 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.
2. 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.

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 \$1011 (as of 20 September 2022) (GST inclusive). You may be eligible to pay a reduced fee of \$100.00 if:

1. legal aid has been granted for the review
2. you hold a health care card, pensioner concession card, Commonwealth seniors health card or other card that certifies entitlement to Commonwealth health concessions
3. you are in prison, immigration detention or otherwise detained in a public institution
4. you are under 18 years of age
5. you receive Youth Allowance, Austudy or ABSTUDY Centrelink payments.

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/sites/default/files/2020-03/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 \$1011, you get back \$911. 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
Sustainable Fisheries Section
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
Canberra ACT 2601
E: 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:

<https://www.dcceew.gov.au/about/reporting/freedom-of-information>. Please contact the Freedom of Information Contact Officer at foi@environment.gov.au for more information.