



The Hon Joe Francis MLA
Minister for Fisheries
13th Floor, Dumas House
WEST PERTH WA 6005

Dear Minister

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

The WA Marine Aquarium Fish Managed Fishery was most recently assessed under the international wildlife trade provisions of Part 13A of the EPBC Act in December 2013. The Delegate of the then Minister for the Environment subsequently declared the WA Marine Aquarium Fish Managed Fishery an approved wildlife trade operation under Part 13A of the EPBC Act until 20 October 2016. This allowed export of product from the fishery to continue during the period of the declaration.

In September 2016, the WA Department of Fisheries provided an application to the Department of the Environment and Energy seeking continued export approval for the WA Marine Aquarium Fish Managed Fishery.

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 2013 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 and Energy's website at: <http://www.environment.gov.au/marine/fisheries/wa/marine-aquarium>

I consider that the management arrangements for the WA Marine Aquarium Fish Managed Fishery 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 species-specific catch limits, gear restrictions, an ecological risk assessment and spatial closures, and
- the *Non-Detriment Finding for the Export of CITES-Listed Species Harvested from the WA Marine Aquarium Managed Fishery – October 2016* made by Australia's Scientific Authority for Marine Species for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),

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 next three years 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 WA Marine Aquarium Fish Managed Fishery an approved wildlife trade operation until 18 October 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 taxa which are harvested in the fishery and which are listed in the Appendices to CITES, including hard corals, giant clams and seahorses. 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 and Energy).

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 management regime for the WA Marine Aquarium Fish Managed Fishery was most recently accredited under Part 13 of the EPBC Act, for interactions with protected species in Commonwealth waters, in December 2012. 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 when operating in Commonwealth waters.

I have therefore reaccredited the management regime for the WA Marine Aquarium Fish Managed Fishery under Part 13 of the EPBC Act subject to the condition at **Attachment 2**. Accreditation will ensure that individual fishers operating in accordance with the current management regime 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 and Energy 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 black ink, appearing to read 'Paul Murphy', written in a cursive style.

Paul Murphy

Delegate of the Minister for the Environment and Energy

20 October 2016

**Conditions on the approved wildlife trade operation declaration for the
Western Australian (WA) Marine Aquarium Fish Managed Fishery**

1. Operation of the fishery 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 any intended material changes to the fishery's 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 to produce and present reports to the Department annually as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*.
4. The WA Department of Fisheries to:
 - a) limit harvest of CITES listed species according to current non-detriment findings for each species or species group, and
 - b) consult with the Department prior to a change to the management arrangements for a CITES or EPBC Act listed species being implemented
5. In consultation with the Department, the WA Department of Fisheries to:
 - a) complete the ecological risk assessment (ERA) report
 - b) finalise and adopt the harvest strategy for the fishery, and
 - c) consider further research on CITES species to better define species' distribution and abundance in areas of high fishing effort.

Part 13 Condition

Persons fishing in accordance with the management regime for the WA MAFMF in force under the *WA Fish Resources Management Act 1994* and the *WA Fish Resources Management Regulations 1995* do not retain any species listed under Part 13 of the EPBC Act taken, killed or injured in Commonwealth waters as a result of fishing.

Notification of Reviewable Decisions and Rights of Review¹

There is a right of review to the Administrative Appeals Tribunal in relation to certain decisions made by the Minister or the Minister's delegate under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Section 303GJ of the EPBC Act provides that applications may be made to the Administrative Appeals Tribunal for the review of the following decisions of the Minister:

- (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; and
- apply to the Administrative Appeals Tribunal (**AAT**) for independent merits review of the decision. 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 1300 366 700 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.

The cost of lodging an application for review is \$884 (GST inclusive) (current as of 1 July 2016).

You may be eligible to pay a reduced fee of \$100.00 if:

- you are receiving legal aid for your application;

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

- 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.

Contact Details

Further information or enquiries relating to the decision should be directed to:

The Director
Sustainable Fisheries Section
Department of the Environment and Energy
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 +61 (0) 2 9276 5000
F: +61 (0) 2 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.

