



Australian Government
**Department of Agriculture,
Water and the Environment**

Mr Sean Sloan
Deputy Director General, Fisheries and Hunting
Department of Primary Industries, Fisheries NSW
Locked Bag 1
NELSON BAY NSW 2541

Dear Mr Sloan

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the New South Wales Ocean Trawl Fishery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

On 29 April 2021, your department (New South Wales Department of Primary Industries) applied for assessment of the New South Wales Ocean Trawl Fishery under export and protected species provisions of 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 Agriculture, Water and the Environment's website at <http://www.environment.gov.au/marine/fisheries/nsw>. Taking into account the management arrangements in place in the fishery I am satisfied that the operation of the fishery is consistent with the objects of the wildlife trade provisions of Part 13A of the EPBC Act.

Accordingly, I have decided to declare the fishery an approved wildlife trade operation until 1 July 2024. 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 specified in the instrument of declaration. A copy of these conditions is outlined in **Attachment 1**.

Officers from the New South Wales Department of Primary Industries and the department have discussed key areas requiring ongoing attention for the fishery. While there are some environmental risks associated with the fishery, I believe that the New South Wales Department of Primary Industries is committed to addressing these issues and has already taken proactive measures.

The management regime for the fishery has also been assessed under Part 13 of the EPBC Act, for interactions with protected species. I am satisfied that the management regime will require fishers take all reasonable steps to ensure that members of species protected under Part 13 of the Act (other than conservation dependent species) are not killed or injured as a result of the fishing, and that the fishery is not likely to adversely affect the survival or recovery in nature of any of these species in the fishery.

This accreditation ensures 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 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 2**.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Laura Timmins', written in a cursive style.

Laura Timmins
Delegate of the Minister for the Environment

/ July 2021

Part 13A conditions to the New South Wales Department of Primary Industries on the approved wildlife trade operation declaration for the New South Wales Ocean Trawl Fishery - June 2021

Condition 1:

Operation of the New South Wales Ocean Trawl Fishery must be carried out in accordance with the management arrangements specified in the *Fisheries Management Act 1994* (NSW), Fisheries Management (General) Regulation 2019 (NSW), Fisheries Management (Supporting Plan) Regulation 2006, and the Fisheries Management (Ocean Trawl Management Plan) Regulation 2006.

Condition 2:

The New South Wales Department of Primary Industries must inform the Department of Agriculture, Water and the Environment of any intended material changes to the New South Wales Ocean Trawl Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.

Condition 3:

The New South Wales Department of Primary Industries must inform the Department of Agriculture, Water and the Environment of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval.

Condition 4:

The New South Wales Department of Primary Industries must produce and present reports to the Department of Agriculture, Water and the Environment annually as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*.

Condition 5:

By 1 July 2022, New South Wales Department of Primary Industries must provide Department of Agriculture, Water and the Environment with a transition plan for the New South Wales Ocean Trawl Fishery. The transition plan must clearly document all existing data collection, assessment and performance monitoring, and management responses, for the recovery of depleted stocks impacted by the New South Wales Ocean Trawl Fishery.

The transition plan must clearly articulate the interrelationships between these functions, to demonstrate that management of the depleted stock(s) will remain sustainable and facilitate recovery.

The transition plan must also include timelines and milestones for the transition to and implementation of harvest strategies in the fishery.

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.

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:

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

1. you are receiving legal aid for your application;
2. 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;
3. you are in prison or lawfully detained in a public institution;
4. you are under 18 years of age; or
5. 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 at <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 Agriculture, Water and the Environment
GPO Box 787
Canberra ACT 2601
Telephone: +61 (0) 2 6274 1917
Email: sustainablefisheries@awe.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@awe.gov.au for more information.