



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

Mr Nathan Harrison
Director of Aquatic Resources Management
WA Department of Primary Industries and Regional Development
Locked Bag 39
CLOISTERS SQUARE WA 6850

Dear Mr Harrison

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

On 30 April 2021, your department applied for assessment of the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed 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/wa>. 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 Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery an approved wildlife trade operation until 19 August 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 DPIRD 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 DPIRD 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. 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 have accredited the management arrangements for the fisheries designed to minimise interactions with species listed under Part 13 of the EPBC Act. The Part 13A declaration includes conditions that were agreed by officials from both departments as areas requiring ongoing attention. These are set out at **Attachment 1**.

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 black ink, appearing to read 'L. Timmins', with a stylized flourish at the end.

Laura Timmins
Delegate of the Minister for the Environment

20 August 2021

Part 13A conditions to the Western Australian Department of Primary Industries and Regional Development on the approved wildlife trade operation declaration for the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery – August 2021

Condition 1:

Operation of the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery must be carried out in accordance with the management arrangements specified in the *Fish Resources Management Act 1994 (WA)*, Fish Resources Management Regulations 1995 (WA), the *Aquatic Resources Management Act 2016 (WA)*, the Southern Demersal Gillnet and Demersal Longline Fishery Management Plan 2018 and West Coast Demersal Gillnet and Demersal Longline Interim Fishery Management Plan 1997.

Condition 2:

The Western Australian Department of Primary Industries and Regional Development must inform the Department of Agriculture, Water and the Environment of any intended material changes to the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline 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 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 Western Australian Department of Primary Industries and Regional Development 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 December 2022, the Western Australian Department of Primary Industries and Regional Development must ensure that all catch in the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery is reported to species level. This includes landed and discarded catch. Where species-level reporting is not possible, catches of these species must be managed in a precautionary manner.

Condition 6:

By December 2022, the Western Australian Department of Primary Industries and Regional Development must ensure that all sharks retained by the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery are landed in a form

that facilitates ready and reliable identification. This must include a prohibition on removal of fins and other morphological features that are necessary to identify species at the point of landing.

Condition 7:

The Western Australian Department of Primary Industries and Regional Development to develop and implement an independent data collection and validation program in the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery by February 2024. This may involve the use of electronic monitoring, onboard observers or other means. The information collected must be sufficient to reliably demonstrate the accuracy of all reported catch, effort and protected species interaction data collected via logbooks.

Condition 8:

By December 2021 the Western Australian Department of Primary Industries and Regional Development must publish an ecological risk assessment of the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery, which considers the impacts of the fisheries on all target and non-target species, habitats and other ecological processes.

Condition 9:

The Western Australian Department of Primary Industries and Regional Development must develop, review and implement ecological risk mitigation measures to address any significant risks identified in the ecological risk assessment for the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery.

Part 13 conditions on the accreditation of the management arrangements for the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery – August 2021

Condition A:

The Western Australian Department of Primary Industries and Regional Development to develop and implement an independent data collection and validation program in the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery by February 2024. This may involve the use of electronic monitoring, onboard observers or other means. The information collected must be sufficient to reliably demonstrate the accuracy of all reported catch, effort and protected species interaction data collected via logbooks.

Condition B:

By December 2021 the Western Australian Department of Primary Industries and Regional Development must publish an ecological risk assessment of the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed Fishery, which considers the impacts of the fisheries on all target and non-target species, habitats and other ecological processes.

Condition C:

The Western Australian Department of Primary Industries and Regional Development must develop, review and implement ecological risk mitigation measures to address any significant risks identified in the ecological risk assessment for the Western Australian West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery and the Southern Demersal Gillnet and Demersal Longline Managed 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. 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

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.