



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

Ref: 002068366

Mr Wez Norris  
Chief Executive Officer  
Australian Fisheries Management Authority  
GPO Box 7051  
CANBERRA ACT 2610

Dear Mr Norris

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the Torres Strait Bêche-de-mer Fishery (the fishery) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In October 2020 the Australian Fisheries Management Authority applied for export approval for the fishery under the EPBC Act.

The application has been assessed and I have declared the fishery an approved wildlife trade operation (WTO) under Part 13A of the EPBC Act until 30 November 2023. The list of exempt native specimens has also been amended to allow export of product from the fishery while the specimens are covered by the declaration as an approved wildlife trade operation.

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. Conditions are to be implemented in the period of the wildlife trade operation approval, unless a date is otherwise specified. Further, in assessing the management arrangements in place for this fishery, the Department has identified a number of inconsistencies in the published material relevant to the management of this fishery. In order to ensure that there is no ambiguity to fishers and for the purpose of compliance and enforcement, we urge AFMA to rectify this matter.

Two species harvested in this fishery, White Teatfish (*Holothuria fuscogilva*) and Black Teatfish (*Holothuria whitmaei*), are now listed under Appendix II of the Convention on the International Trade of Endangered Species (CITES). As such, Australia's CITES Scientific Authority must make a non-detriment finding in relation to the harvest of these species in the fishery to ensure that continued trade in these species from Australian fisheries is not detrimental to the survival of the species in the wild. Measures should be in place to limit such export in order to maintain such species throughout their range at a level consistent with their role in the ecosystems and well above the level at which they would qualify for Appendix I listing. Further information on CITES non-detriment findings can be found at Attachment 2.

Australia's CITES Scientific Authority is located in the Wildlife Trade Office of the Department of Agriculture, Water and the Environment. As required under Part 13A of the EPBC Act, Australia's CITES Scientific Authority included its assessment for the purpose of a Non-detriment finding in the Part 13A assessment for this fishery. A positive non-detriment finding has been made for this fishery and conditions have been placed in the relevant WTO to ensure that Australian CITES requirements are met.

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

Laura Timmins  
Delegate of the Minister for the Environment

23 December 2020

**Part 13A conditions to the Torres Strait Protected Zone Joint Authority on the approved wildlife trade operation declaration for the Torres Strait Bêche-de-mer Fishery – December 2020**

**Condition 1:**

The Torres Strait Protected Zone Joint Authority must ensure that operation of the Torres Strait Bêche-de-mer is carried out in accordance with management arrangements defined in the *Torres Strait Fisheries Act 1984*, *Torres Strait Fisheries Regulations 1985*, *Torres Strait Fisheries Management Instrument No.15 (Torres Strait Sea Cucumber Fishery)*, licence conditions and the *Torres Strait Bêche-de-mer Fishery Harvest Strategy*.

**Condition 2:**

The Torres Strait Protected Zone Joint Authority must inform the Department of Agriculture, Water and the Environment of any intended material changes to the Torres Strait Bêche-de-mer Fishery management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made.

**Condition 3:**

The Torres Strait Protected Zone Joint Authority 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 Torres Strait Protected Zone Joint Authority must provide 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:**

The Protected Zone Joint Authority must complete an ecological risk assessment of the Torres Strait Bêche-de-mer Fishery by 1 January 2022 and develop an associated risk management strategy to address any risks identified in this assessment.

**Condition 6:**

The Torres Strait Protected Zone Joint Authority must ensure that there is a sufficient level of compliance measures in place to ensure the sustainable management of the Torres Strait Bêche-de-mer Fishery, in accordance with the management arrangements in place for the fishery.

**Condition 7:**

By 1 November 2023 the Protected Zone Joint Authority must provide the department with a revised population estimate for Black Teatfish (*Holothuria whitmaei*) and White Teatfish (*Holothuria fuscogilva*) in the Torres Strait that is based on new information for the fishery, including catch data and fishery-independent data or scientific expert advice and an assessment of the impact of harvest on the stocks.

**Condition 8:**

The Torres Strait Protected Zone Joint Authority must limit the seasonal take of the following species listed under the Convention on the International Trade of Endangered Species (CITES), from the Torres Strait Bêche-de-mer Fishery to no more than:

1) 15 tonnes of White Teatfish (*Holothuria fuscogilva*); and

2) 20 tonnes of Black Teatfish (*Holothuria whitmaei*).

The Torres Strait Protected Zone Joint Authority must report the amount of White Teatfish and Black Teatfish harvested by weight and where available, include the number of individuals, their lengths and locations of harvest, as part of the annual reporting referred to in Condition 4.

**Condition 9:**

The Protected Zone Joint Authority must address any over harvest of the Total Allowable Catch (TAC) for either Black Teatfish (*Holothuria whitmaei*) or White Teatfish (*Holothuria fuscogilva*) in one season and ensure that any over harvest of the species is properly accounted for in subsequent fishing seasons in line with the provisions in the Torres Strait Bêche-de-mer Fishery's Harvest Strategy.

## CITES Non-Detriment Findings in commercial fisheries

The Convention on International Trade in Endangered Species (CITES) is a binding international agreement, which was ratified by Australia in 1976. The purpose of CITES is to prevent international trade from driving unsustainable population decline in species listed on the Convention's three appendices.

There are three levels of CITES listing:

- Appendix I - for species threatened with extinction. CITES prohibits international trade of Appendix I species except for strictly controlled non-commercial purposes, such as scientific research.
- Appendix II - for species not currently threatened with extinction, but which may become so if harvest is not carefully controlled. CITES allows some limited international trade of these species under very tight rules and controls. CITES permits are required for all exports of Appendix II species.
- Appendix III - for species that may be threatened locally within certain countries. International trade in these species is only allowed with presentation of appropriate 'country of origin' certification. This assists countries with locally threatened populations to better manage trade of these species.

CITES requires the exporting Party's Scientific Authority to make a positive non-detriment finding (NDF) prior to export of CITES specimens listed in Appendix I and II. Australia's CITES Scientific Authority is in the Wildlife Trade Office.

A positive NDF is made when *"the sum of all harvests is sustainable in that it does not result in unplanned range reduction, or long term population decline, or otherwise change the population in a way that might be expected to lead to the species being eligible for inclusion in Appendix I"*.

To ensure that fisheries declared as approved Wildlife Trade Operations (WTO) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) continue to be able to trade internationally in CITES-listed marine species, NDFs need to be based on a level of information that meets international standards, consistent with guidance agreed by resolution by CITES Parties ([https://cites.org/sites/default/files/document/E-Res-16-07-R17\\_0.pdf](https://cites.org/sites/default/files/document/E-Res-16-07-R17_0.pdf)).

Consistent with Resolution Conf. 16.7 Rev CoP 17, Australia's CITES Scientific Authority has taken a risk-based approach to the information requirements for making NDFs. Under this approach, the level of information required to inform an NDF will vary depending on the biological vulnerability of the species, its global and national status, the risks posed to the species, and the degree of certainty associated with these factors. The standard information fields for NDFs include:

- species biology;
- species life history characteristics;
- species range – historic and current;
- population structure, status and trends (nationally and in the harvest area);
- threats;
- species specific (or in some instances genus specific<sup>1</sup>) levels of harvest/ mortality from the fishery (historic and current);
- estimates of species specific (or in some instances genus specific) levels of harvest/mortality from *all sources* combined;
- results of population modelling;

<sup>1</sup> Genus-level reporting is acceptable for some coral species.

- management measures currently in place and proposed, including consideration of rates of compliance;
- a *scientific* assessment of the level of harvest that is considered sustainable under the management regime taking into account all sources of mortality;
- The ability of management measures to constrain harvest to the level assessed to be sustainable; and
- trade information relating to the species.

Where significant risks of species decline are identified (or credible scientific information about the species is limited), highly precautionary fishery management arrangements are likely to be required before non-detriment findings can be issued. A common requirement in this circumstance is for management arrangements to include prescriptive annual trigger limits on the harvest of each CITES listed species.

It is common practice for other countries receiving exports from Australia to monitor and review Australia's non-detriment findings. If an importing country is not satisfied with the quality or level of precaution applied in Australia's non-detriment finding, it can choose to reject an import on that basis and suspend future imports of that species from Australia.



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

**Attachment 3**

**Notification of Reviewable Decisions and Rights of Review<sup>2</sup>**

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 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

---

<sup>2</sup> In accordance with the *Administrative Appeals Tribunal Act 1975* Code of Practice for Notification of Reviewable Decisions and Rights of Review

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 \$952 (as of 1 July 2020) (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 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 \$920, you get back \$820 and if you pay \$952, you get back \$852. 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 858  
Canberra ACT 2601  
**Telephone:** +61 (0) 2 6274 1917  
**Email:** [sustainablefisheries@environment.gov.au](mailto: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](mailto: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](mailto:foi@environment.gov.au) for more information.