

1 Background

1.1 Introduction

In September 2012, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was amended to include Part 15B¹. The amendment enabled the Environment Minister, with the agreement of the Fisheries Minister, to prohibit certain commercial fishing activities while an expert panel undertook an assessment of those activities.

The amendment of the EPBC Act was prompted by a proposal to use the *FV Margiris*, a 142 metre (m) Lithuanian-registered, mid-water trawl vessel, in Australia's Small Pelagic Fishery (SPF). The vessel had an on-board processing facility and storage capacity for fish and/or fish products of approximately 4500 tonnes (t). Vessels of this size and nature had not previously operated in the SPF although proposals to use freezer vessels in the fishery date back to 2004.

After consideration of the environmental impacts of the proposal, the Environment and Fisheries Ministers concluded that there were uncertainties surrounding the use of large mid-water trawl freezer vessels in the SPF. These uncertainties related to the impacts of such vessels on species protected under the EPBC Act, particularly seals and dolphins, and whether such vessels could cause localised depletion which might have an effect on predatory species. On 20 September 2012, under Part 15B of the EPBC Act, the Environment Minister, after consultation with the Fisheries Minister, made the *Interim (Small Pelagic Fishery) Declaration 2012* which came into force on 21 September 2012. The Interim Declaration defined the Declared Commercial Fishing Activity (DCFA) as a commercial fishing activity which:

- a. is in the area of the Small Pelagic Fishery;
- b. uses the mid-water trawl method; and
- c. uses a vessel which is greater than 130 m in length, has an on-board fish processing facility and has storage capacity for fish or fish products in excess of 2000 t.

The Interim Declaration prohibited the DCFA for a period of 60 days while the Environment Minister invited submissions from 'declaration affected persons', as defined in section 390SE of the EPBC Act. The Minister received 116 submissions, of which five were from 'declaration affected persons'.

On 19 November 2012, the Environment Minister made the *Final (Small Pelagic Fishery) Declaration 2012*, which came into force on 20 November 2012. The Final Declaration defined the DCFA in the same terms as the Interim Declaration and was founded on a number of uncertainties with respect to the operation of the DCFA. These uncertainties [see Box 1.1] were articulated in 2012 in a brief to the Environment Minister by his Department and summarised in Logan (2014).

Under the Final Declaration, the DCFA was prohibited for up to two years while an expert panel conducted an assessment and reported to the Environment Minister on the activity. Membership of the Expert Panel on a Declared Commercial Fishing Activity (the panel) and the panel's Terms of Reference were announced on 6 February 2013. The panel² comprised:

- Ms Mary Lack (chair), Director, Shellack Pty Ltd
- Dr Catherine Bulman, Research Scientist, CSIRO Oceans and Atmosphere Flagship
- Associate Professor Simon Goldsworthy, Principal Scientist, Threatened, Endangered and Protected Species Subprogram, South Australian Research and Development Institute
- Professor Peter Harrison, Director, Marine Ecology Research Centre, Southern Cross University.

The panel was supported by a secretariat provided by the Department of the Environment³.

¹ The ability to make new declarations under part 15B of the EPBC Act sunsetted 12 months after the day the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* commenced

² Biographical details of the panel members can be found at <http://www.environment.gov.au/node/16955>

³ Known as the Department of Sustainability, Environment, Water, Population and Communities (DSEWPoC) when the panel was established.

In April 2013, the Environment Minister made a second Final Declaration under Part 15B of the EPBC Act (*Final (Small Pelagic Fishery) Declaration (No. 2) 2013*). The second Final Declaration includes the use of a vessel of a certain size to receive or process quota fish species that have been taken in the SPF. In September 2014, the expert panel for the first Final Declaration was also appointed by the Environment Minister to conduct the assessment under the second Declaration. In accordance with the EPBC Act, the panel will report separately on the two Final Declarations. This report applies only to the first Declaration.

Box 1.1 Basis and nature of uncertainties underlying the first Final Declaration

“On the nature of fishing for small pelagic fish species with large mid-water trawl freezer vessels:

The length of time that large mid-water trawl freezer vessels are able to stay at sea pursuing and harvesting target pelagic fish gives rise to some uncertainty about the environmental impacts of such commercial fishing activities.

On the vessel’s interactions with seals:

Given the evidence that mid-water trawl vessels do interact with seals in the SPF, and the target species of large mid-water trawl freezer vessels are key prey species of the Australian fur seal, the Department notes that there is some uncertainty re the level of environmental impact on seals from the operations of large mid-water trawl freezer vessels. The uncertainty stems from whether interaction rates are likely to increase due to habituation noting that Seal Excluder Devices are not yet at a stage of avoiding all seal mortality or injury.

On the vessel’s interactions with dolphins:

The rareness and unpredictability of dolphin interactions experienced with smaller mid-water trawl vessels related to operations observed in near shore areas. In light of the findings of the AFMA [Australian Fisheries Management Authority] that dolphins may be attracted to the catch of large mid-trawl (sic) freezer vessels, the Department notes there is some uncertainty about the effects that large mid-water trawl freezer vessels might have on the nature and rate of interactions with dolphins.

On the vessel’s interactions with seabirds:

The nature of interactions between seabirds and other types of trawl vessel is fairly well known. The department considers that based on the advice provided by Seafish [Seafish Tasmania Pty Ltd] about the depth at which the cod-end will be left in the water, together with the application of a seabird management plan, the impact on seabirds of large mid-water trawl freezer vessels entering the fishery may be less than for other trawl methods and therefore there is little or no uncertainty about the potential environmental impacts on seabirds.

On the vessel’s interactions with Australian sea lions:

If large mid-water trawl freezer vessels were to operate outside the known foraging range of Australian sea lion and breeding and haul-out sites, there would be very low uncertainty about their impacts on the species.

On the likelihood of localised depletion:

The department notes there are areas of some uncertainty about the potential for and possible environmental effects of localised depletion of small pelagic fish species that may result from the introduction of a large mid-water trawl freezer vessel, namely:

- a) Whether localised depletion is likely to occur;
- b) If it did occur, what effect localised depletion would have on the species being fished; and
- c) If it did occur, what effects localised depletion would have on predator species.” (Logan 2014)

1.2 Terms of Reference

The panel's Terms of Reference (Appendix 1) require that the panel assess and advise on:

1. the likely nature and extent of direct interactions of the Declared Commercial Fishing Activity with species protected under the EPBC Act, particularly seals and dolphins
2. the potential for any localised depletion of target species (arising from the Declared Commercial Fishing Activity) to result in adverse impacts to the Commonwealth marine environment, including the target species' predators protected under the EPBC Act
3. actions that could be taken by operators of the Declared Commercial Fishing Activity or relevant regulatory authorities to avoid, reduce and mitigate adverse environmental impacts of the activity
4. monitoring or scientific research that would reduce any uncertainties about the potential for adverse environmental impacts resulting from the Declared Commercial Fishing Activity
5. any other matters about the environmental impacts of the Declared Commercial Fishing Activity that the expert panel considers relevant to its assessment
6. other related matters that may be referred to it by the Minister.

The panel assessed each of the matters identified in Terms of Reference one to four and has not assessed any other matters under the fifth Term of Reference. The Minister did not refer any other related matters to the panel.

1.3 Structure of the report

Details of the panel's approach to the assessment of the DCFA, including the panel's interpretation of the Terms of Reference, are described in Chapter 2. Contextual information on the SPF is provided in Chapter 3. The role of the SPF target species in the southern Australian ecosystem is discussed in Chapter 4. The panel's assessment of the potential direct impact of the DCFA on species protected under the EPBC Act and of the potential for any localised depletion arising from the DCFA to result in adverse impacts on the Commonwealth marine environment is provided in Chapters 5 and 6, respectively. A summary of the panel's assessment and advice on each of the Terms of Reference is provided in Chapter 7.