



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

Mr Graeme Bolton
Deputy Director-General
Fisheries and Forestry
Department of Agriculture and Fisheries
GPO Box 46
BRISBANE QLD 4001
agriculture@ministerial.qld.gov.au

Dear Mr Bolton

I am writing to you as Delegate of the Minister for the Environment in relation to the assessment of the Queensland East Coast Otter Trawl Fishery (the fishery) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In April 2021, the Queensland Department of Agriculture and Fisheries (QDAF) applied for export approval for the fishery under the EPBC Act.

The application has now been assessed and I have declared the fishery an approved Wildlife Trade Operation (WTO) under Part 13A of the EPBC Act until 20 December 2024. This approval is contingent on eight conditions being met by QDAF (**Attachment A**) during the period of the WTO approval. I have also accredited the fishery's management regime under Part 13 of the EPBC Act, which is subject to QDAF meeting two additional conditions (**Attachment B**).

It is important to note the conditions established in the two approvals will require QDAF to undertake a range of actions to improve the fishery's sustainability. Key amongst these conditions is a prohibition on the harvest of saucer scallops until scientific evidence is provided to demonstrate the fishery's management arrangements will not contribute to overfishing. They also require the development of a formal scallop rebuilding strategy to guide the fishery back to a more sustainable level of harvest.

In order to meet the first of these conditions, QDAF will need to provide the Department of Agriculture, Water and the Environment with the required scientific evidence (including an updated stock assessment) before the Southern Offshore saucer scallop fishing season opens on 20 January 2022. Failure to provide the required evidence by this date will mean that vessels will not be able to take or harvest scallops in the fishery and could lead to the revocation of the WTO approval for the whole fishery if harvesting were to occur. I welcome your assistance in ensuring that QDAF provides the department with suitably robust scientific evidence well before the required date.

Please note a 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 it reviewed. I have enclosed information on these processes at Attachment C.

I look forward to assessing Queensland's progress against the conditions in the annual reports for this fishery.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Sincock', written in a cursive style.

Adam Sincock
Principal Director
Wildlife Trade Office
17 December 2021

Part 13A Conditions on the approved Wildlife Trade Operation declaration for the Queensland East Coast Otter Trawl Fishery – December 2021

Condition 1:

The Queensland Department of Agriculture and Fisheries must ensure that the operation of the Queensland East Coast Otter Trawl Fishery is carried out in accordance with the management regime specified in the following:

- *Fisheries Act 1994 (Qld)*
- Fisheries (General) Regulation 2019 (Qld)
- Fisheries (Commercial Fisheries) Regulation 2019 (Qld)
- Fisheries Declaration 2019 (Qld)
- Fisheries Quota Declaration 2019 (Qld)
- *Marine Parks Act 2004 (Qld)*
- Marine Parks Regulations 2019 (Qld)
- *Great Barrier Reef Marine Park Act 1975 (Cth)*
- Great Barrier Reef Marine Park Regulations 2019 (Cth).

Condition 2:

The Queensland Department of Agriculture and Fisheries must inform the Department of Agriculture, Water and the Environment of any intended material changes to the Queensland East Coast Otter Trawl Fishery management arrangements that may affect the assessment against which Environment Protection and Biodiversity Conservation Act 1999 decisions are made.

Condition 3:

The Queensland Department of Agriculture and Fisheries 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 Queensland Department of Agriculture and Fisheries must produce and present reports on the Queensland East Coast Otter Trawl Fishery, including progress against all of the conditions established in this assessment report, to the Department of Agriculture, Water and the Environment by 30 June annually, as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*.

Condition 5:

Consistent with Principle 1 of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition* and the precautionary principle, the Queensland Department of Agriculture and Fisheries must:

- a) Not allow the take or harvest of saucer scallops until the Department of Agriculture Water and the Environment has been provided with science-based evidence, including an updated stock assessment, that any management arrangements proposed, adopted or implemented in the fishery for saucer scallops will not contribute to overfishing and further depletion of the saucer scallop stock.
- b) Not maintain, adopt or implement management arrangements that contribute to overfishing of saucer scallops, in particular, while the stock is below a minimum reference point of 30% of original biomass (as referenced in the Queensland Department of Agriculture and Fisheries correspondence to licence holders on 27 August 2021).
- c) As part of the annual report described in Condition 4, provide updated science-based evidence, including an updated stock assessment, to the Department of Agriculture, Water and the Environment, that demonstrates overfishing of saucer scallops is not occurring and the saucer scallop stock is on a suitable rebuilding trajectory.
- d) Develop and publish a formal rebuilding strategy for the Queensland East Coast Otter Trawl Fishery saucer scallop stock. This strategy should be developed as a matter of priority (by 30 June 2022) and be consistent with the *Queensland Sustainable Fishery Strategy 2017–2027*, and the Queensland Government's *Harvest Strategy Policy and Guidelines*.
- e) Implement the key management actions identified in the formal rebuilding strategy. These actions should be fully implemented by 30 November 2022.

Condition 6:

By 30 November 2022, the Queensland Department of Agriculture and Fisheries must work with the Great Barrier Reef Marine Park Authority to develop a review that determines a scientifically informed and risk based total effort cap for the Queensland East Coast Otter Trawl Fishery operations within the Great Barrier Reef World Heritage Area as a whole, and within each management region within the Great Barrier Reef World Heritage Area. This needs to ensure trawling occurring within the heritage area is ecologically sustainable for all species, habitats, and regions.

Condition 7:

By 20 May 2024, the Queensland Department of Agriculture and Fisheries must develop and implement a statistically robust, independent, quantitative and validated monitoring and data collection regime in the Queensland East Coast Otter Trawl Fishery. 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. This regime needs to gather suitable data on the level of catch, discards and interactions in the fishery to inform the sustainable management of target, byproduct and bycatch species (including protected species).

Condition 8:

By 30 November 2023, the Queensland Department of Agriculture and Fisheries must:

- a) Develop and implement mitigation measures to address all risks identified as being at intermediate or above risk from the impacts of fishing in the existing Ecological Risk Assessments, according to protocols described in the *Fisheries Queensland Ecological Risk Assessment Guideline*.
- b) Complete and publish an updated Ecological Risk Assessment for the Queensland East Coast Otter Trawl Fishery, which describes whole of fishery risks and species-specific risks within each of the fishery's management regions. This should follow the protocols described in the *Fisheries Queensland ERA Guideline 2018*.
- c) The updated Ecological Risk Assessment should incorporate any new published literature and data made available from the benthic fauna biodiversity surveys proposed for deep water and previously undocumented sections of the Coral Sea.

Part 13 Conditions on the Accreditation of Management Regime

Condition A:

The Queensland Department of Agriculture and Fisheries must:

- a) by 30 November 2022, develop and implement a best practice management strategy for the Queensland East Coast Otter Trawl Fishery that includes best practice handling and release techniques for non-target species to reduce discard mortality.
- b) by 30 November 2023 develop and implement mitigation measures to address all risks identified as being at intermediate or above risk from the impacts of fishing in the existing Ecological Risk Assessments, according to protocols described in the *Fisheries Queensland Ecological Risk Assessment Guideline*.
- c) continue to monitor any new research and development to support consideration of further management actions that respond to the ecological risks that may be posed by the Queensland East Coast Otter Trawl Fishery to sea snakes. This may include additional research and monitoring activities, including at sea trials of any identified improvements to mitigation devices, to guide the uptake of improved sea snake bycatch reduction devices in the fishery.

Condition B:

By 20 May 2024, the Queensland Department of Agriculture and Fisheries must develop and implement a statistically robust, independent, quantitative and validated monitoring and data collection regime in the Queensland East Coast Otter Trawl Fishery. 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. The regime needs to gather suitable data on the level of catch, discards and interactions in the fishery to inform the sustainable management of byproduct and bycatch species (including protected species).

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.

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

The cost of lodging an application for review is \$962 (as of 16 December 2021) (GST inclusive).

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

3. you are receiving legal aid for your application;
4. 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;
5. you are in prison or lawfully detained in a public institution;
6. you are under 18 years of age; or
7. 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 \$962, you get back \$862. 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
Sustainable Fisheries Section
Department of Agriculture, Water and the Environment
GPO Box 858
Canberra ACT 2601
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 <https://www.awe.gov.au/about/reporting/freedom-of-information>. Please contact the Freedom of Information Contact Officer at foi@awe.gov.au for more information.