



Unique Identifying Number:
EPBC303DC/SFS/2016/12



Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL

No: 2015/4287

GENERAL DIVISION

Re: Friends of Shorebirds SE Incorporated
Applicant

And: Minister for the Environment
Respondent

And: Australian Kelp Products Pty Ltd
Other Party

And: Minister for Agriculture, Food and Fisheries (South Australia)
Other Party

TRIBUNAL: Deputy President K Bean

DATE: 24 March 2016

PLACE: Adelaide

In accordance with subsection 340(1) of the *Administrative Appeals Tribunal Act 1975* (the Act):

1. in the course of an alternative dispute resolution process, the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
2. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
3. seven days have passed after lodgement and none of the parties has notified the Tribunal in writing that he or she wishes to withdraw from the agreement; and
4. the Tribunal is satisfied that a decision consistent with those terms is within the powers of the Tribunal and is appropriate to make.

UPON NOTING that:

- A. On 3 June 2015, the Respondent made a declaration under section 303FN of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) that the harvesting of specimens under Miscellaneous Fishery Licence Y078 in the South Australian Beach-Cast Marine Algae Fishery is an approved wildlife trade operation;
- B. That declaration was subject to a number of conditions, described in the declaration as 'Additional Provisions', which were imposed under section 303FT of the EPBC Act;
- C. On 20 August 2015, the Applicant sought review of the Respondent's decision; and
- D. On 3 March 2016, the parties attended a conciliation conference, at which the parties agreed to resolve the proceedings on the basis that the conditions imposed be changed;

THE TRIBUNAL, pursuant to subsection 34D(2) of the Act, varies the declaration of 3 June 2015 so as to provide that the declaration is subject to the following conditions, imposed under section 303FT of the EPBC Act:

- 1. Relating to the harvesting of fish specimen that are, or are derived from, fish or invertebrates, than specimens of species listed under Part 13 of the EPBC Act, taken in the South Australian Beach-Cast Seagrass and Marine Algae Fishery:
 - (a) Operation of the South Australian Beach-Cast Marine Algae Fishery will be carried out in accordance with the South Australian *Fisheries Management (Miscellaneous Fishery) Regulations 2015* and the South Australian *Fisheries Management (General) Regulations 2007* in force under the *Fisheries Management Act 2007*.
 - (b) The Department of Primary Industries and Regions South Australia (PIRSA) to inform the Department of the Environment of any intended material changes to the South Australian Beach-Cast Marine Algae Fishery management arrangements that may affect the assessment against which EPBC Act decisions are made.
 - (c) PIRSA to produce and present reports to the Department of the Environment annually as per Appendix B of the Guidelines for the Ecologically Sustainable Management of Fisheries- 2nd Ed.
 - (d) PIRSA to take all reasonable steps to mitigate adverse impacts on migratory shorebirds by the South Australian Beach-Cast Marine Algae Fishery operations (harvesting and/or transporting of beach-cast wrack), including through:
 - (i) implementing a management strategy that ensures at least 50% of the licence area is excluded from the fishery operations at all times, including closing the area from the Beachport Conservation Park to approximately one kilometre north of Blowhole Road;
 - (ii) avoiding the removal of all non-target species from the harvest area;

- (iii) imposing additional requirements in the period from 1 September to 15 May (inclusive) each year, on sandy beaches along Wrights Bay, Nora Creina, Stinky Beach and the Rivoli Bay area from approximately one kilometre north of Blowhole Road to the southern end of the Fishery, including only permitting harvesting to occur:
 - a. by way of hand harvesting (assisted by mechanical winch if required);
 - b. on a maximum of 8 calendar days (or any part thereof) per calendar month, and a maximum of 4 calendar days (or any part thereof) between 1 May and 15 May, with each harvesting day to be advised to PIRSA prior to the commencement of harvesting; and
 - c. through the use of up to two vehicles (4 wheel drive utility, or similar, with a trailer with a gross vehicle mass of 3.5 tonne), with up to three people per vehicle, on any one day; and
- (iv) prohibiting harvest operations within 100 metres either side of any nesting areas where *Thinornis rubricollis* (hooded plovers) are currently nesting and/or caring for dependent young, in all areas at all times.
- (e) PIRSA, in collaboration with the South Australian Department of Environment, Water and Natural Resources, industry and where possible, the community to:
 - (i) implement a monitoring program to annually assess the impact of the South Australian Beach-Cast Marine Algae Fishery on migratory shorebirds; and
 - (ii) continue to support research with the aim of understanding and effectively managing the ecological risk posed by the Fishery to shorebirds and all relevant terrestrial and coastal ecosystems.
- (f) Any data obtained from the monitoring program (excluding commercial in confidence data) must be included in the annual report sent to the Department of the Environment and should be available to the South Australian Department of Environment, Water and Natural Resources.


K BEAN
(Deputy President)

The seal of the Administrative Appeals Tribunal of Australia is circular. It features the Australian coat of arms in the center, which includes a kangaroo and an emu flanking a shield. The words "ADMINISTRATIVE APPEALS TRIBUNAL" are written around the top inner edge of the circle, and "AUSTRALIA" is written at the bottom.