



Commonwealth of Australia

Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

I, Tanya Plibersek, Minister for the Environment and Water, provide these reasons for my decision under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) to grant an exemption to the University of Tasmania (represented by the Institute of Marine and Antarctic Studies; IMAS), and those acting on its behalf, from the application of all of the provisions of Part 3 and Chapter 4 of the EPBC Act, in relation to the following action:

The collection and captive management of Red Handfish (*Thymichthys politus*), including but not limited to:

- the collection of up to 50 Red Handfish from the wild;
- holding those captured Red Handfish in captivity;
- captive husbandry of Red Handfish including utilising them in a captive breeding program;
- habitat recovery activities within known Red Handfish habitat; and
- the release of collected Red Handfish or their captive-reared offspring to the habitat from which they were taken and/or translocation of individuals to another location.

Legislation

SECTION 158 OF THE EPBC ACT PROVIDES:

158 EXEMPTIONS FROM PART 3 AND THIS CHAPTER

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.

- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
 - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
 - (b) give a copy of the notice to the person specified in the notice.

Background

1. On 19 December 2023, the Institute of Marine and Antarctic Studies of the University of Tasmania wrote to the Department of Climate Change, Energy, the Environment and Water (**the department** or **DCCEE**) to seek a national interest exemption under section 158 of the EPBC Act. The exemption request is for the collection and captive management of the Red Handfish. IMAS subsequently made minor changes to their application and resubmitted it on 21 December 2023, with that version being the subject of this decision, and henceforth referred to in this statement as 'the application'.
2. On 21 December 2023, the department provided me a brief on the request by IMAS for an exemption.
3. On 21.12.23 I decided to grant the exemption. This statement provides the reasons for my decision.

Evidence

4. The evidence or other material on which my findings were based was a brief from my department dated 21 December 2023 (**the departmental brief**).
5. The departmental brief attached the following documents:
 - a. application letter and its attachments received under section 158 of the EPBC Act for the exemption (**the application letter**);
 - b. decision notice;
 - c. draft letters to IMAS and the Tasmanian Minister for Environment and Climate Change;

- d. a copy of the *Approved Conservation Advice for Thymichthys politus (red handfish) (the Conservation Advice)*;
- e. a copy of the *Recovery Plan for Three Handfish Species (the Recovery Plan)*;
- f. an extract of EPBC Act section 158; and
- g. line area advice from the Marine Species Conservation Section of the department.

Findings

- 6. In making my decision, I made findings on the basis of the evidence and information before me.
- 7. The Red Handfish is listed as critically endangered under the EPBC Act and is endemic to south-east Tasmania.
- 8. The approved Conservation Advice for *Thymichthys politus* (Red Handfish) states that the species has undergone a marked decline in both distribution and abundance. The principal identified threat to the species is habitat degradation resulting from introduced species, pollution and siltation, increasing water temperatures, and the proliferation of other native species as a result of human activities.
- 9. The Conservation Advice also states that the Red Handfish is critically reliant on the availability of green algae as spawning substrate. An increase in the abundance of the native sea urchin in Tasmania, due to increasing water temperatures, has resulted in significant over-grazing of the algae which the Red Handfish requires to breed successfully.
- 10. On 14 December 2023, Red Handfish Summer Emergency Response Workshops (the workshops) were held with representatives from IMAS, DCCEEW, CSIRO, the Department of Natural Resources and Environment Tasmania (NRE Tas), Bureau of Meteorology, University of Sydney, Seahorse World, Victorian Fisheries Authority, the Zoos and Aquarium Association, Tasmanian Aboriginal Centre, and the National Handfish Recovery Team.
- 11. The workshops concluded that there is a very high risk of multiple marine heatwave events and high atmospheric temperatures during the 2023-24 summer in Tasmania, and that these expected events will result in severe water temperature increases in the shallow waters of [REDACTED].
- 12. It is predicted that in addition to unprecedented water temperatures this is likely to result in poor water quality, low dissolved oxygen levels, and high turbidity which would further impact the Red Handfish.

Proposed Emergency Response

- 13. IMAS have sought an exemption from all of the provisions of Part 3 and Chapter 4 of the EPBC Act to undertake the following emergency action:

- a. the collection of up to 50 percent of the known population of Red Handfish (approximately 25 fish) throughout the first 2 weeks of January 2024 for captive management (stage 1); and
 - b. monitoring of the remaining wild population throughout January and February 2024 to identify mortality; and
 - c. the collection of the remaining surviving population (to a total of 100%) if mortality is detected and conditions are deteriorating (stage 2); and
 - d. captive management of the collected fish at two locations in Tasmania; and
 - e. release of the captive fish at [REDACTED] in mid-2024 if conditions improve, and the habitat is identified as being suitable, or
 - f. ongoing captive management including participation in an established captive breeding program until new habitat is identified which would allow for the species to be translocated.
14. As the Red Handfish is critically endangered, and the proposed action would impact at least 50% of the wild population, I agreed with my department that the action will have a significant impact on the Red Handfish. Given the timing of the proposed action, a National Interest Exemption is the only pathway for the proposed action to proceed, given it will be impossible to undertake the Chapter 4 assessment process in time.
15. I noted that IMAS have established a successful captive management and breeding program for the Red Handfish. This program keeps fish at two separate locations in Hobart, Tasmania. As of December 2023, this program has 121 fish in captivity, comprising of 4 adult fish, 82 sub adult fish and 35 juvenile fish which are planned for release.
16. IMAS proposes to capture additional wild fish and manage them in captivity in accordance with procedures that have been developed over the 2 years which this program has been operational. I concluded that this component of the proposal presents low risk to the species. However, there is a risk that introducing wild fish to this program could introduce pathogens that would result in mortality amongst the captive fish.
17. A higher risk to the species is the potential failure of the proposed reintroduction of captive adult fish to the wild. The applicant has released juvenile fish previously, however there is little long-term evidence available to demonstrate outcomes. The applicant has not released adult fish into the wild previously, but proposes to do so mid-winter when conditions are optimal and just ahead of the breeding season. However, there is no data available to estimate the likelihood of success, or potential for mortality during this phase of the proposed action.
18. A significant benefit of the proposed action is the potential for it to contribute to improving the genetic diversity of the existing captive population. This population could then become an insurance population, that (over the long term) may lead to the successful reintroduction of the species to new locations in the wild. The small number of breeding adults in the currently established program means that at this point the genetic diversity is insufficient for broader reintroduction programs.

19. I noted that should I grant the requested exemption, I am not able to attach conditions to the exemption. This means that the risks discussed above cannot be treated through the provision of management plans or post approval interventions.
20. In summary, taking this action may contribute to the survival of the species, and long-term population expansion. On the other hand, if the action is unsuccessful it may contribute to the loss of the species in the wild.
21. Against this, the risk of this action not being taken is that the forecast temperature extremes are realised, and that this may be catastrophic for the wild population.
22. The CSIRO and the Bureau of Meteorology have provided predictive modelling in support of the forecast marine heatwave. On 20 December 2023, Alastair Hobday, CSIRO Research Director, Sustainable Marine Futures, advised my Department that the forecast marine heatwave has arrived, with offshore temperatures being up to 5 degrees higher than is expected at this time of the year. Whilst there is uncertainty regarding when this water will impact [REDACTED], there is consensus that it is moving and will arrive within weeks. It is expected to dissipate in February 2024.
23. There is more uncertainty regarding atmospheric conditions. If a stable high pressure system establishes over Tasmania at the same time as the marine heatwave, there is consensus that these events will combine and result in unprecedented water temperatures in [REDACTED]. The consensus is that the previous record water temperature of approximately 20 degrees will be exceeded, potentially by several degrees.
24. I noted that a key issue is the lack of data available to demonstrate the point at which water temperatures become fatal for the Red Handfish. This information is available for other species, such as salmon, which will begin to suffer mortality above 18 degrees. Anecdotal evidence suggests that water temperatures in Tasmania are already impacting Rock Lobster and Abalone species. It is scientifically understood, however, that Red Handfish are a slow-moving species, so do not have the ability to move to cooler waters in response to marine heatwaves.

State Approval Requirements

25. The action cannot go ahead without a permit being issued by the Department of Natural Resources and Environment Tasmania (NRE). NRE had informed my Department that should a permit be issued, it would likely include permit conditions. The likely permit conditions would include requirements for IMAS to:
 - a. Abide by animal ethics approval issued by UTAS, which covers matters like how animals must be taken, transported and cared for.
 - b. Report to NRE daily on the number of animals taken, and details on the area of habitat that has been covered in that day's search.
 - c. Stop taking Red Handfish upon the direction of NRE.

Summary of Line Advice from Marine Species Conservation Section

26. My decision took into account the detailed line advice provided by the Marine Species Conservation Section (Attachment H of the decision brief). The line advice:

- a. described in detail the risks and likely outcomes to the species of taking the action versus not taking the action; and
 - b. confirmed that there was scientific consensus on the best course of action.
27. Attachment A to the line advice from the Marine Species Conservation Section was a summary of the Red Handfish Summer Emergency Response Workshops Summary held on 14 December 2023, in which there was consensus that the action is the best way to reduce the chance of the Red Handfish from going extinct. Of the 38 people who attended, 14 were members of the National Handfish Recovery Team.
28. Attachment B to the line advice from the Marine Species Conservation Section was an email from Inger Visby, Acting Chair of the National Handfish Recovery Team, stating that they provide endorsement of the application on behalf of National Handfish Recovery Team.
29. Attachment C to the line advice from the Marine Species Conservation Section was a summary of a meeting of the Threatened Species Scientific Committee (TSSC) who agreed that the application is reasonable and appropriate.

Conclusion and Findings

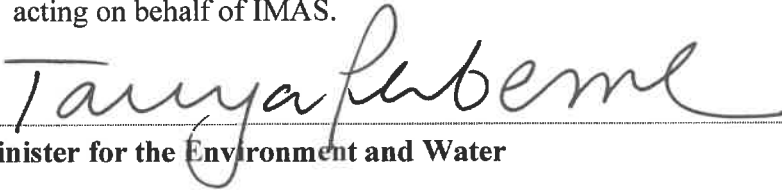
30. In light of the matters discussed above, I found that:
- a. In the absence of an exemption, it is likely that the action would require approval under the EBPC Act, given it will have a significant impact on the Red Handfish.
 - b. There are risks associated with both taking the action and not taking the action. These risks are exacerbated by a lack of certainty regarding potential outcomes of either option.
 - c. There is insufficient time to source data or explore alternative options in detail, as the likelihood of a marine heatwave occurring, and impacting the Red Handfish imminently is high.
 - d. There is scientific consensus that the proposed emergency intervention is the most appropriate course of action to prevent the imminent extinction of the Red Handfish.

Reasons

31. I may grant an exemption from provisions of Part 3 or Chapter 4, only if I am satisfied that it is in the national interest that those provisions not apply to the specified person or the specified action.
32. Subsection 158(5) states that in determining the national interest, I may consider Australia's defence, security or a national emergency, including an emergency to which a national emergency declaration (within the meaning of the National Emergency

Declaration Act 2020) relates. However, this does not limit the factors that I may take into consideration.

33. I considered that, if no action is taken, there is a serious prospect that the Red Handfish would become extinct due to the extreme water temperatures this summer and that IMAS' proposed collection and captive breeding program is necessary to try and prevent its imminent extinction. IMAS' program would also be consistent with the threatened species action plan and the Australian Government's policy of preventing further extinction of Australian species.
34. In light of my findings made on the basis of the information before me, I considered that on balance it is in the national interest that all provisions of Part 3 and Chapter 4 of the EPBC Act not apply to the proposed collection and captive management of the Red Handfish, so that the action can proceed.
35. As such, I decided to grant the exemption, under subsection 158(3), from all of the provisions of Part 3 and Chapter 4 of the EPBC Act. The specified action is the collection and captive management of the Red Handfish, as described in the exemption notice. The specified person is the University of Tasmania, as represented by IMAS, and those persons acting on behalf of IMAS.



Minister for the Environment and Water

21/12/2023