



Commonwealth of Australia

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

I, Greg Hunt, Minister for the Environment, provide this statement of reasons for my decision under subsection 158(3) of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to grant the Shire of Eurobodalla, and those acting on behalf of the Shire of Eurobodalla, an exemption from the application of all of the provisions of Part 3 and Chapter 4 of the EPBC Act in relation to the following actions:

- a. until 31 December 2016, the dispersal of the Grey-headed Flying-Fox (GHFF) camps at Batemans Bay, New South Wales, by non-lethal means, and associated vegetation management (but excluding any dispersal during the period from 1 August 2016 until such time as there is notification by the Commonwealth Department of the Environment's appointed experts that the general population's period of dependency has been completed); and
- b. until 31 December 2016, vegetation management associated with the dispersal of the GHFF camps at Batemans Bay, New South Wales (but not in relation to dispersal activities themselves).

A copy of the exemption notice is attached.

Legislation

Section 158 of the EPBC Act provides:

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. 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 17 May 2016, I received an application from Councillor Lindsay Brown, the Mayor of the Eurobodalla Shire Council, requesting that I grant an exemption under section 158 of the EPBC Act to enable the Council to proceed with the dispersal of GHFF camps at Batemans Bay and associated vegetation management.
2. On 17 May 2016, I requested that my Department provide a briefing to inform my decision to grant an exemption to enable non-lethal action to manage the GHFF camps at Batemans Bay and a draft response to the Council's letter of 17 May.
3. On 17 May 2016, I granted the exemption described above.

Evidence

4. The evidence or other material on which my findings were based included the following:
 - a. A meeting on 18 April, 2016, with the Mayor of Eurobodalla Shire Council, Councillor Lindsay Brown and Ann Sudmalis, MP. At that meeting, Councillor Brown provided a draft management plan for the GHFF camp at Batemans Bay and discussed the impacts of the presence of such a large number of GHFF on the community and issues surrounding dispersal.
 - b. briefings provided by the Department dated 6 May, 13 May and 17 May 2016;
 - c. my attendance at the public meeting convened by the Eurobodalla Shire Council on 16 May 2016 in Batemans Bay at which I heard about the impacts of the GHFF on the local community; and
 - d. a letter from the Eurobodalla Shire Council dated 17 May 2016 seeking an exemption under section 158 of the EPBC Act in relation to the dispersal of GHFF camps in the Batemans Bay area.

Findings

5. On 6 May 2016, I was briefed by the Department that GHFF were currently causing community concerns in the Batemans Bay region of NSW because of their large numbers at some sites, the associated noise and smell, and potential risk of exposure to Hendra virus and Australian Bat Lyssa virus.
6. Significant numbers of GHFF have been recorded at various times within the Batemans Bay area since 2013. These numbers have fluctuated subject to the season and availability of food in the area.

7. The Department further advised me that the Eurobodalla Shire Council was convening a public meeting on 16 May 2016 in Batemans Bay.
8. On 11 May 2016, the Eurobodalla Shire Council provided the Department with a copy of the Batemans Bay flying-fox Camp draft dispersal plan (dated 6 May 2016) for comment.
9. On 13 May 2016, the Department informed me that Council could decide to proceed with the plan if implemented as described as it was not inconsistent with the Department's *Referral guideline for management actions in grey-headed and spectacled flying-fox camps*.
10. The Department indicated that the risk that any delay to dispersal when flying-foxes are heavily pregnant or have dependant young would not be appropriate. I therefore concluded that there was a significant risk that if urgent action was not taken, no further response could be implemented throughout 2016.
11. The Department also indicated other options apart from dispersal, including departmental advice concerning development of a conservation agreement for GHFF management, National Environmental Science Programme funding for research and Green Army programme support to the Council.
12. On 13 May 2016, the Department responded to the Council's draft plan. The Department acknowledged that flying-fox camps can impact the amenity of nearby residents, and provided the Council with the Department's Referral Guideline to assist the development of management actions in flying-fox camps to avoid significantly impacting this threatened species. Council was advised that camp management actions undertaken consistently with the requirements set out in the Department's Guideline generally do not require approval under the Act before they are undertaken. The Mayor subsequently indicated to me that he and the Council were concerned that this could be a controlled action and they were not in a position to urgent take action without clear federal exemption or approval.
13. On 16 May 2016, I conducted a site visit and attended a community meeting at Batemans Bay to see the camp, and hear firsthand the experience of the community affected by the large GHFF camp which had been established in the area and had grown quickly from 20,000 to over 120,000 in a comparatively short time.
14. At the meeting I heard directly about the serious impact to the community from GHFF noise and droppings, the risks to the health of its residents from the Hendra and Lyssa viruses and the economy of Batemans Bay, including from reduced tourist trade.
 - a. I was made aware of the risk to the mental and emotional health of Batemans Bay residents.
 - b. I was made aware of the impacts of up to approximately 120,000 GHFF in the community, an event that is unique and unprecedented in size and scope within an urban/residential setting to the best of the advice provided during the meeting.
 - c. I was made aware of the risks the GHFF presented to uninterrupted and effective electricity supply due to their roosting habits and which are creating safety hazards, particularly for the elderly and children.

15. The above impacts were confirmed clearly and unambiguously in discussions with the Mayor and the Council.
16. Having regard to these matters, I concluded that the public health and safety issues and social and economic impacts from the presence of such large numbers of GHFF were of such deep concern to the community that the Eurobodalla Shire Council should be able to immediately deal with the significant health, social and economic issues posed by the GHFF.
17. However, I wished to balance the deep level of community concern with the ongoing welfare of the GHFF as a listed threatened species under the EPBC Act and so I decided to ensure that there were limits to how and when the action was to take place to avoid the time when the pregnant females and dependent young are most vulnerable. The means of dispersal were confined to non-lethal activities.
18. To that end, I determined that an exemption should only apply to dispersal activities that occur outside this period of vulnerability. On the advice of the Department, I decided that this period will run from 1 August 2016 until such time as there is notification to the Council by Commonwealth Department of the Environment appointed experts that the general population's period of dependency has been completed.
19. I also sought to ensure that the Council entered into a long term Conservation Agreement under the EPBC Act for the dispersal of GHFF camps at Batemans Bay by 31 December 2016 to ensure that longer term management actions are put in place to prevent a re-occurrence of this problem. The exemption will cease before 31 December 2016, if a Conservation Agreement is entered into prior to that time.

Reasons

20. In the light of the matters discussed in paragraphs 1-18 above, I was satisfied that it is in the national interest that all of the provisions of Part 3 and Chapter 4 of the EPBC Act should not apply in relation to the following actions:
 - a. until 31 December 2016, the dispersal of the GHFF camps at Batemans Bay, New South Wales, by non-lethal means, and associated vegetation management (but excluding any dispersal during the period from 1 August 2016 until such time as there is notification by Commonwealth Department of the Environment appointed experts that the general population's period of dependency has been completed); and
 - b. until 31 December 2016, vegetation management associated with the dispersal of the GHFF camps at Batemans Bay, New South Wales (but not in relation to dispersal activities themselves).
21. The very nature of the national interest exemption is that it is overwhelmingly likely to be invoked in relation to specific imminent threats in concentrated areas. This was in my view a unique and overwhelming case of impact on a community for the above reasons.

22. Accordingly, I decided on 17 May 2016 to exempt the Shire of Eurobodalla and those acting on behalf of the Shire of Eurobodalla from all of the provisions of Part 3 and Chapter 4 of the EPBC Act, in relation to the actions described above.



Minister for the Environment

3 JUN 2016



Commonwealth of Australia

Exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

I, Greg Hunt, Minister for the Environment, being satisfied that it is in the national interest to do so, under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) grant an exemption for the Shire of Eurobodalla, and those acting on behalf of the Shire of Eurobodalla, from the application of all of the provisions of Part 3 and Chapter 4 of the EPBC Act:

1. until 31 December 2016, in relation to the dispersal of the Grey-headed Flying-Fox camps at Batemans Bay, New South Wales, by non-lethal means, and associated vegetation management; and
2. until 31 December 2016, in relation to vegetation management associated with the dispersal of the Grey-headed Flying-Fox camps at Batemans Bay, New South Wales (but not in relation to dispersal activities themselves).

It is a condition of the exemption in paragraph 1 that dispersal can occur at all times other than when the Grey-headed Flying-Fox females are heavily pregnant or with dependent young (the period of vulnerability). This period of vulnerability will run from 1 August 2016 until such time as there is notification by Commonwealth Department of the Environment appointed experts that the general population's period of dependency has been completed.

A further condition is that the Shire of Eurobodalla seeks in good faith to enter into a long term conservation agreement under the EPBC Act for the dispersal of Grey-headed Flying-Fox camps at Batemans Bay by 31 December 2016. This exemption will expire when such a conservation agreement is reached or on 31 December 2016, whichever is the earliest.

This exemption takes effect on the date of this notice.


Minister for the Environment

Dated the 17th day of May 2016