

Joint Management Agreement

between the

Minister for Primary Industries

and the

Chief Executive of the Office of Environment and Heritage

for the

NSW Shark Meshing (Bather Protection) Program

July 2017



New South Wales
Government

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Joint Management Agreement
in accordance with
Part 7A Division 8 of the *Fisheries Management Act 1994*
and
Part 7 Division 2 of the *Threatened Species Conservation Act 1995*

AGREEMENT enacted on date of last signature of the Parties

PARTIES

The Minister for Primary Industries

AND

The Chief Executive of the Office of Environment and Heritage (OEH).

1 LEGISLATIVE CONTEXT

- 1.1 Harming Threatened Species, Populations or Ecological Communities is an offence under the *Fisheries Management Act 1994* and under the *National Parks and Wildlife Act 1974*.
- 1.2 Harming Protected Fauna is an offence under the *National Parks and Wildlife Act 1974*.
- 1.3 Taking or Possessing Protected Fish is an offence under the *Fisheries Management Act 1994*.
- 1.4 It is a defence to prosecution under the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974* for harming Threatened Species, Populations or Ecological Communities if the activity was authorised by, and done in accordance with a joint management agreement made under Part 7A Division 8 of the *Fisheries Management Act 1994* and/or Part 7 Division 2 of the *Threatened Species Conservation Act 1995*.
- 1.5 It is a defence to prosecution under the *National Parks and Wildlife Act 1974* for harming Protected Fauna if the activity was authorised by, and done in accordance with a joint management agreement made under Part 7 Division 2 of the *Threatened Species Conservation Act 1995*.
- 1.6 The purpose of this Agreement is to manage the NSW Government's Shark Meshing (Bather Protection) Program by the Department of Primary Industries (DPI) to the extent to which it may result in harm to Fish, Marine Vegetation, Marine Mammals, Marine Birds and Marine Reptiles that are Threatened Species, Populations or Ecological Communities or that are Protected Fauna (as defined in the *National Parks and Wildlife Act 1974*).
- 1.7 If DPI carries out Shark Meshing in accordance with this Agreement it will have a defence to prosecution for harming Fish, Marine Vegetation, Marine Mammals, Marine Birds and Marine Reptiles that are Threatened Species, Populations or Ecological Communities or that are Protected Fauna (as defined in the *National Parks and Wildlife Act 1974*).

1.8 Nothing in this Agreement affects the operation of any other Act or Regulation, or relieves the Parties to this Agreement from complying with any other Acts or Regulation.

2 DEFINITIONS

2.1 In this Agreement unless the contrary intention appears:

“**Agreement**” means this document ‘*Joint Management Agreement for the NSW Shark Meshing (Bather Protection) Program*’ and the arrangements provided therein.

“**Contractor**” means the organisation which by the Contractor undertakes to provide the services required by the Contract and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners as the case may be and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of DPI.

“**DPI**” means the NSW Department of Primary Industries.

“**Fish**” has the same meaning as in section 5 of the *Fisheries Management Act 1994*.

“**Fisheries Scientific Committee**” means the Fisheries Scientific Committee established under section 221ZA of the *Fisheries Management Act 1994*.

“**Management Plan**” means the *Management Plan for the NSW Shark Meshing (Bather Protection) Program* prepared by the DPI and as amended from time to time in accordance with clause 10.2.

“**Marine Birds**” means animals of the orders of Procellariiformes, Pelecaniformes and Falconiformes, and animals of the family Laridae and Stercorariidae.

“**Marine Mammal**” means all animals of the orders of Cetacea, Sirenia and Pinnipedia.

“**Marine Reptiles**” means animals of the family Cheloniidae and Dermochelyidae.

“**Marine Vegetation**” has the same meaning as in the *Fisheries Management Act 1994*.

“**Meshing Season**” means the period from 1 September until and including 30 April of the next consecutive calendar year.

“**Nets**” means bottom-set synthetic filament mesh nets, 150m in length, with 60cm mesh size and 6m in depth, set in a generally parallel direction off the beach, anchored in approximately 10m depth of water (not more than 12m depth) with a weighted bottom line (leadline) and a floated top line (floatline). The Nets are identified by surface floats.

“**Non-Target Species**” means all vertebrate species other than Target Sharks.

“**OEH**” means the Office of Environment and Heritage.

“**Parties to the Agreement**” means the Minister for Primary Industries and the Chief Executive of the Office of Environment and Heritage.

“**Protected Fauna**” has the same meaning as in the *National Parks and Wildlife Act 1974*.

“Protected Fish” means species of fish listed in Part 1 of the Table to clause 5 and Part 1 of the Table to clause 6 of the *Fisheries Management (General) Regulation 2010*.

“Release Plan” means any guidelines, advice or similar information resources prepared by OEH and/or DPI to inform Contractors of suitable methods and procedures for the disentanglement, tagging and release of live Marine Mammals, Marine Reptiles, Marine Birds and Fish.

“Scientific Committee” means the Scientific Committee established under section 128 of the *Threatened Species Conservation Act 1995*.

“Shark Meshing” means the placing of Nets at the 51 beaches listed in Table 1 of the Management Plan to protect the public from Target Sharks.

“Target Sharks” means White Shark (*Carcharodon carcharias*), Tiger Shark (*Galeocerdo cuvier*) and Bull Shark (*Carcharhinus leucas*).

“Threatened Species” has the same meaning as in the *Fisheries Management Act 1994* and as in the *Threatened Species Conservation Act 1995*.

“Threatened Species, Populations and Ecological Communities and Threatened Species, Population or Ecological Community” have the same meanings as in the *Fisheries Management Act 1994* and as in the *Threatened Species Conservation Act 1995*.

“Trigger Point” means those trigger points identified in clause 12 of the Management Plan.

3 COMMENCEMENT AND EXPIRATION DATE

3.1 This Agreement has effect from the day the last party signed this Agreement and remains in force until terminated in accordance with clause 11 of this Agreement.

4 SPECIES, POPULATIONS OR COMMUNITIES TO WHICH THE AGREEMENT APPLIES

4.1 This Agreement applies to Marine Mammals, Marine Reptiles, Marine Birds, Fish and Marine Vegetation which are:

4.1.1 Threatened Species, Populations or Ecological Communities; as well as

4.1.2 Protected Fauna and Protected Fish as so defined in clause 2.1.

5 ACTION MANAGED BY THIS AGREEMENT

5.1 This Agreement manages Shark Meshing carried out by the DPI which may result in harm to fauna and Marine Vegetation identified in clause 4.

6 OBJECTIVES OF THIS AGREEMENT

6.1 The objectives of this Agreement are to:

6.1.1 Minimise the impact of Shark Meshing on Marine Mammals, Marine Reptiles, Marine Birds, Fish and Marine Vegetation that are a Threatened Species, Population or Ecological Community or are Protected Fauna or Protected Fish; and

- 6.1.2 Ensure that Shark Meshing does not jeopardise the survival or conservation status of Threatened Species, Populations or Ecological Communities, or cause species that are not threatened to become threatened.

7 ACHIEVEMENT OF THE OBJECTIVES

- 7.1 To achieve the objectives of this Agreement:
 - 7.1.1 DPI will only carry out Shark Meshing in accordance with this Agreement and the Management Plan;
 - 7.1.2 DPI will only carry out Shark Meshing during the Meshing Season;
 - 7.1.3 DPI will ensure that Nets are fitted with acoustic warning devices;
 - 7.1.4 DPI will require that Contractors comply with by-catch reduction protocols and release protocols contained in the Management Plan and any Release Plans;
 - 7.1.5 DPI will continue research into methods of minimising by-catch of Non-Target Species through implementation of the Strategic Research and Monitoring Program contained in the Management Plan; and
 - 7.1.6 The Parties to the Agreement will ensure that comprehensive Release Plans are in place.
- 7.2 Despite clause 7.1.2, the Nets may be set up to 2 days before 1 September or retrieved up to 2 days after 30 April for those seasons commencing or concluding on a weekend. This variation is limited to seasons commencing on a weekend and seasons concluding on a weekend for the 5 year period prior to review of this Agreement.
- 7.3 Where OEH is of the opinion that the location and behaviour of an individual or group of individuals belonging to the family Balaenidae, Balaenopteridae or Dugongidae places it at risk of entanglement, OEH may make a request to DPI to delay or modify the setting of Nets at specified beaches.
- 7.4 DPI must consider any request made by OEH under clause 7.3 and notify the public of any proposed delays or modifications prior to implementing any change. Public notification is to take the form of temporary signage at affected beaches for the duration of the delay or modification.

8 ASSESSING THE EXTENT OF ACHIEVEMENT OF THE OBJECTIVES

- 8.1 The Parties to the Agreement agree that progress towards achieving the objectives of this Agreement will be assessed by the measures in this clause 8.
- 8.2 **Measure:** Monthly Catch Summary Report **Responsibility:** DPI
 - 8.2.1 DPI will prepare monthly catch summary reports in accordance with the Management Plan.
 - 8.2.2 DPI will provide monthly catch summary reports to OEH, the Scientific Committee, and the Fisheries Scientific Committee.
- 8.3 **Measure:** Annual Performance Report **Responsibility:** DPI
 - 8.3.1 DPI will prepare an annual performance report which will:
 - a) document progress towards implementing the Management Plan; and

- b) assess the performance of the Management Plan and this Agreement in mitigating impacts on Threatened Species, Populations and Ecological Communities and on Protected Fauna (as defined herein).
- 8.3.2 DPI will prepare the annual performance report in accordance with the Management Plan.
- 8.3.3 DPI will provide the annual performance report prior to 31 July each year to:
- a) the Scientific Committee to inform their annual review as provided for in section 122(2)(a) of the *Threatened Species Conservation Act 1995*;
 - b) the Fisheries Scientific Committee to inform their annual review as provided for in section 221Y(2)(a) of the *Fisheries Management Act 1994*;
 - c) the Parties to the Agreement; and
 - d) OEH.
- 8.3.4 DPI will make the annual performance report publicly available.
- 8.3.5 The advice of the Scientific Committee and the Fisheries Scientific Committee on their annual review of the Agreement will be made publicly available in accordance with s.122(3) of the *Threatened Species Conservation Act 1995* and s.221Y(3) of the *Fisheries Management Act 1994*, respectively.

8.4 Measure: Review Report

Responsibility: DPI and/or OEH

- 8.4.1 DPI and/or OEH will prepare a review report after the completion of each Meshing Season in response to either of the following circumstances:
- a) the annual performance report prepared in accordance with clause 8.3 identifies that a Trigger Point has been tripped;
 - b) the annual performance report prepared in accordance with clause 8.3 identifies that timeframes under the Management Plan have not been met.
- 8.4.2 DPI and/or OEH will prepare the review reports as relevant to their legislation and in accordance with the Management Plan.
- 8.4.3 The review report may make recommendations for remedial action.
- 8.4.4 DPI or OEH will, within 6 months of publication of the annual performance report that identified the need for such a review report, provide that review report to:
- a) the Parties to the Agreement;
 - b) the Fisheries Scientific Committee; and
 - c) the Scientific Committee.
- 8.4.5 DPI will make the review report publicly available.

9 REVIEW OF AGREEMENT

- 9.1 This Agreement is to be reviewed by the Parties to the Agreement five years from the date of commencement.

10 AMENDMENT OF AGREEMENT

- 10.1 This Agreement may only be amended by a joint management agreement prepared in accordance with the *Fisheries Management Act 1994* and the *Threatened Species Conservation Act 1995*.
- 10.2 Notwithstanding clause 10.1, the Parties to the Agreement acknowledge that the Management Plan may be amended from time to time in accordance with processes established by the Management Plan provided that the Management Plan continues to meet the objectives of this Agreement and records any such amendments.

11 TERMINATION OF AGREEMENT

- 11.1 This Agreement may be terminated by agreement between the Parties to the Agreement.
- 11.2 This Agreement may be terminated by either party giving notice to the other party where the other party has breached the Agreement and has not rectified the breach within 28 days of receiving notice requiring it to do so.
- 11.3 This Agreement may be terminated by OEH giving 14 days written notice to DPI if the Agreement is not achieving the objectives in clause 6.
- 11.4 OEH must not terminate the Agreement under clause 11.3 unless:
- 11.4.1 Written notice of the intention to terminate the Agreement has been given to DPI stating that DPI may make a submission to OEH with the period specified in the notice (not being a period less than 28 days); and
 - 11.4.2 OEH has considered any submissions made by DPI being a submission made within that specified period.
- 11.5 As soon as practicable after termination of the Agreement, OEH must publish notice of the termination of the Agreement in the Gazette.

12 DISPUTE RESOLUTION

- 12.1 A Party claiming that a dispute has arisen in relation to the Agreement must notify the other Party giving details of the dispute.
- 12.2 The Parties must negotiate in good faith to resolve the dispute.
- 12.3 If the dispute is not resolved under clause 12.2 within 14 days (or longer period agreed between the Parties) from the date of notice of the dispute under clause 12.1, the dispute will be referred to the Minister for the Environment for resolution.
- 12.4 If the dispute is not resolved under clause 12.3 within 14 days (or longer period agreed between the Parties) from the date of referral the dispute will be referred to the Premier for resolution.

13 RELATIONSHIP TO OTHER DOCUMENTS

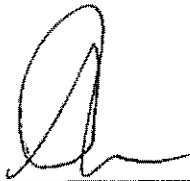
- 13.1 This document should be read in conjunction with:
- 13.1.1 the *5-Year Review of the August 2009 Joint Management Agreements for the NSW Shark Meshing (Bather Protection) Program*; and

13.1.2 the *Management Plan for the NSW Shark Meshing (Bather Protection) Program, July 2017*.

13.2 This Agreement prevails in the event of any inconsistencies between this Agreement and the documents referred to in clause 13.1.

SIGNED by

The Minister for Primary Industries




THE MINISTER FOR PRIMARY INDUSTRIES

Date: 21.8.2017

SIGNED by

The Chief Executive of the Office of Environment and Heritage



RICHARD KINGSWOOD
A / DIRECTOR CONSERVATION
NATIONAL PARKS AND WILDLIFE SERVICE

THE CHIEF EXECUTIVE (or a delegated authority)

Date: 14 AUGUST 2017