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JOINT MANAGEMENT AGREEMENT

BETWEEN

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE

AND

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF PRIMARY INDUSTRIES

FOR

The NSW Shark Meshing (Bather Protection) Program

<<Date>>

JOINT MANAGEMENT AGREEMENT UNDER PART 7 DIVISION 2 OF THE THREATENED SPECIES CONSERVATION ACT 1995

AGREEMENT dated the **<<Date>>**

PARTIES

The Director-General of the NSW Department of Environment and Climate Change

AND

The Director-General of the NSW Department of Primary Industries.

1. LEGISLATIVE CONTEXT

1.1. Harming Protected Fauna and harming Threatened Species, Populations or Ecological Communities is an offence under the *National Parks and Wildlife Act 1974*.

1.2. It is a defence to prosecution under the *National Parks and Wildlife Act 1974* for harming Protected Fauna or 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 7 Division 2 of the *Threatened Species Conservation Act 1995*.

1.3. The purpose of this Agreement is to manage the carrying out of Shark Meshing by DPI which may result in harm to Marine Mammals, Marine Birds and Marine Reptiles which are Protected Fauna or are Threatened Species, Populations or Ecological Communities.

1.4. If DPI carries out Shark Meshing in accordance with this Agreement it will have a defence to prosecution for harming Marine Mammals, Marine Birds and Marine Replies which are Protected Fauna or a Threatened Species, Population or Ecological Community.

1.5. 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.

"DECC" means the NSW Department of Environment and Climate Change.

"DPI" means the NSW Department of Primary Industries.

"Management Plan" means the Management Plan for the NSW Shark Meshing (Bather Protection) Program prepared by the DPI as amended from time to time in accordance with clause 10.2. The current version of the Management Plan is attached and marked Annexure A to this Agreement.

"Marine Birds" means animals of the orders of Procellariiformes, Pelecaniformes and Falconiformes, and animals of the family Laridae and Stercorcariidae.

"Marine Mammal" means all animals of the orders of Cetacea, Sirenia and Pinnipedia.

"Marine Reptiles" means animals of the family Cheloniidae and Dermochelyidae.

"Meshing Season" means the period between 1 September and 30 April.

"Nets" means bottom-set synthetic filament mesh nets, 150m in length and 6m in depth, set in a generally parallel direction off the beach, anchored in approximately 10m depth of water with a weighted bottom line (leadline) and a floated top line (headline). The Nets are identified by surface floats.

"Non-Target Species" means all vertebrate species other than whaler sharks (bull, dusky, bronze, blacktip and spinner), tiger shark, white shark, mako (shortfin) shark, and broad-nosed sevengill shark.

"Parties to this Agreement" means the Director-General of DECC and the Director-General of DPI.

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

"Release Plan" means any guidelines prepared by DECC or DPI for the disentanglement and release of marine mammals, marine reptiles and marine birds.

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

"Shark Meshing" means the placing of nets around beaches or other waters at the 51 beaches listed in Table 1 of the Management Plan to protect the public from sharks.

"Threatened Species, Populations and Ecological Communities and **Threatened Species, Population or Ecological Community"** have the same meanings as in the *Threatened Species Conservation Act 1995*.

"Trigger Point" means those trigger points identified in clause 11 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.

4. THREATENED SPECIES AND POPULATIONS TO WHICH THE AGREEMENT APPLIES

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

4.1.1. Threatened Species, Populations or Ecological Communities; or

4.1.2. Protected Fauna

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 identified in clause 4.

6. OBJECTIVES OF THE AGREEMENT

6.1. The objectives of this Agreement are to:

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

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 OBJECTIVE

7.1. To achieve the objective 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 this Agreement will ensure that comprehensive Release Plans are in place.

7.2. Despite clause 7.1.2 on seasons commencing or concluding on a weekend, the Nets may be set up to 2 days before the 1 September or retrieved up to 2 days after the 30 April. This variation is limited to seasons commencing on a weekend (2012 & 2013) and seasons concluding on a weekend (2010 & 2011) for the 5 year period prior to review of this Agreement.

7.3. Where DECC 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, DECC 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 DECC 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. MEASURES BY WHICH PROGRESS TOWARDS ACHIEVING THE OBJECTIVE IS TO BE ASSESSED & RESPONSIBILITY FOR THEIR IMPLEMENTATION

8.1. The Parties to this Agreement agree that progress towards achieving the objective 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 DECC.

8.3. **Measure**: Annual Performance Report **Responsibility**: DPI

8.3.1. DPI will prepare an annual performance report which will:

a) document the progress towards implementing the Management Plan.

b) assess the performance of the Management Plan and this Agreement in mitigating impacts on Threatened Species, Populations and Ecological Communities.

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 the commencement of the next Meshing Season to:

a) the Scientific Committee to inform their annual reviews as provided for in section 122(2)(a) of the *Threatened Species Conservation Act 1995*; and

b) DECC.

8.3.4. DPI will make the annual performance report publicly available.

8.4. **Measure**: Review Report **Responsibility**: DPI

8.4.1. DPI will prepare a review report after the completion of each Meshing Season and prior to the commencement of the next 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 will prepare the review report in accordance with the Management Plan.

8.4.3. The review report may make recommendations for remedial action.

8.4.4. DPI will provide the review report to DECC and 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 this Agreement five years from the date of commencement, or following the listing of a new species, population or ecological community under the *Threatened Species Conservation Act 1995* that may be directly and detrimentally affected by Shark Meshing.

10. AMENDMENT OF AGREEMENT

10.1. This Agreement may only be amended by a joint management agreement prepared in accordance with the *Threatened Species Conservation Act 1995*.

10.2. Notwithstanding clause 10.1, the Parties to this 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.

11. TERMINATION OF AGREEMENT

11.1. This Agreement may be terminated by agreement between the Parties to this 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 that other party has not rectified the breach within 28 days of receiving notice requiring it to do so.

11.3. This Agreement may be terminated by DECC giving 14 days written notice to DPI if the Agreement is not achieving the objectives in clause 6.

11.4. DECC 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 DECC with the period specified in the notice (not being a period less than 28 days); and

11.4.2. DECC 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, DECC 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 Parties must refer the matter to the Minister for the Environment and Climate Change, and the Minister for Primary Industries 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. RELATION TO OTHER DOCUMENTS

13.1. This document should be read in conjunction with:

a) Report into the NSW Shark Meshing (Bather Protection) Program (Green et al. 2009); and

b) Management Plan for the NSW Shark Meshing (Bather Protection) Program.

13.2. In the event of any inconsistency between this Agreement and the documents in clause 13.1 this Agreement prevails.

SIGNED by

The Director-General of the NSW Department of Environment and Climate Change

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THE DIRECTOR-GENERAL

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Date:

SIGNED by

The Director-General of the NSW Department of Primary Industries

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THE DIRECTOR-GENERAL

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Date: