

MEMORANDUM OF UNDERSTANDING

between the

AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY

and the

**DEPARTMENT OF THE
ENVIRONMENT AND HERITAGE**

for

**THE REPORTING OF FISHERIES INTERACTIONS WITH
PROTECTED SPECIES UNDER THE *ENVIRONMENT
PROTECTION AND BIODIVERSITY CONSERVATION ACT*
1999**

THIS MEMORANDUM OF UNDERSTANDING is made on the 17 day of August 2005 between the MANAGING DIRECTOR of the AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY and the SECRETARY of the DEPARTMENT OF THE ENVIRONMENT AND HERITAGE.

INTERPRETATION

In this Memorandum of Understanding (MOU):

"Australian Fisheries Management Authority (AFMA)" means the statutory authority established under the *Fisheries Administration Act 1991 (FM Act)*;

"Cetacean" means any member of the Order Cetacea.

"Concession holder" means the holder of a fishing concession, defined in the *FM Act* as a:

- (a) a statutory fishing right; or
- (b) a fishing permit; or
- (c) a foreign fishing licence;

"Department of the Environment and Heritage (DEH)" means the Department responsible for environment and heritage policy advice and implementation of Commonwealth environment protection legislation, specifically the *EPBC Act*;

"*EPBC Act*" means the *Environment Protection and Biodiversity Conservation Act 1999*;

"Fishery", as defined in the *Fisheries Administration Act 1991*, means a class of activities by way of fishing, including activities identified by reference to all or any of the following:

- (a) A species or type of fish;
- (b) A description of fish by reference to sex or any other characteristic;
- (c) An area of waters or of seabed;
- (d) A method of fishing;
- (e) A class of boats;
- (f) A class of persons;
- (g) A purpose of activities.

"*FM Act*" means the *Fisheries Management Act 1991*;

"Interaction" means any physical contact an individual has with a protected species. This includes all catching (hooked, netted, entangled) and collisions with an individual of these species;

"Logbook" means the official Commonwealth or State Fisheries Agency issued catch and effort logbook. The logbook provides for the recording of information on the location, time, gear and method of fishing as well as the resulting catch for each fishing operation, including any protected species interactions;

"Managing Director" means the Managing Director of the Australian Fisheries Management Authority;

"Protected Species" means all listed threatened, migratory and marine species under the *EPBC Act* and all cetaceans.

"Secretary" means the Secretary of the Department of the Environment and Heritage.

AGREEMENT

This MOU is being established to streamline the reporting requirements for fishers interacting with species protected under the *EPBC Act*. Both parties to this MOU have agreed for AFMA to facilitate, within Commonwealth managed fisheries, fishers' obligations under the *EPBC Act* to report protected species interactions to DEH. This agreement will reduce the administrative reporting burden on individual fishers and provide for regular reporting of protected species interactions to DEH. Data obtained in this way will be used to assess the level of protected species interactions with fisheries and assist in the development of management and mitigation measures to reduce interaction levels where necessary.

This MOU provides for AFMA to supply periodic reports on protected species interactions to DEH compiled from the official logbook records submitted to AFMA by concession holders. Data will only be provided for concession holders who agree to AFMA supplying their interaction data to DEH. AFMA will not disclose other information to DEH without the concession holders' consent unless such disclosure of information to DEH is within the scope of its functions and powers or as required by law. Reports will be supplied for each fishery for an agreed list of species groups and species where possible. Based on these summaries, AFMA will supply specific information on individual interactions to DEH on request. More details on the exact nature of the reporting are included in Schedule 1.

The legislation enacted by each Agency contains provisions in relation to the reporting of fisheries interactions with protected species. This MOU is to establish the administrative arrangements between AFMA and DEH to streamline interaction reporting and assist fishers meet their requirements under the *EPBC Act* and *FM Act*. AFMA will give all concession holders the opportunity to agree to AFMA providing their protected species interaction reports to DEH.

Unless exceptional circumstances exist, DEH will not take any actions in respect of a failure to meet the seven day reporting requirement of protected species interactions under the *EPBC Act* where the concession holder has consented to AFMA reporting an interaction in accordance with this MOU and the interaction was recorded in the concession holders logbook at the time of the interaction. Individuals on boats used by concession holders opting to not have AFMA report on their behalf will be responsible for reporting protected species interactions directly to DEH, in line with *EPBC Act* requirements.

GENERAL CONDITIONS

Organisation Contacts

Officers from each organisation will be appointed to maintain contact on behalf of their respective agencies in relation to matters covered by the MOU. These officers are as follows:

AFMA:

Senior Manager
Environment Policy Section

DEH:

Director
Wildlife Impact and Protection Section

Data provision costs

AFMA, in the first instance, will establish the internal reporting processes for this agreement. It is estimated it will cost up to \$10,000 to establish these processes.

AFMA will provide the data reports to DEH at its own cost. This arrangement will be reviewed as part of the MOU review after 12 months of reporting has occurred and cost sharing arrangements may be negotiated based on this review.

Terms of Memorandum

The MOU will remain in force until either party terminates it. Termination may be by either party at any time through written notification to the other signatory.

In the event of the termination of this MOU, concession holders who have agreed for AFMA to report interactions with protected species on their behalf will be notified by AFMA that they are no longer covered by an agreement and will, from a date specified, be responsible for reporting interactions directly to DEH. A reasonable notice period will be provided to concession holders prior to the MOU being terminated so that they are in a position to organise their affairs in order to report directly to DEH.

The MOU may be amended at the request of either party subject to both parties agreeing in writing to the change.

Following the first 12 months of data being reporting to DEH, both agencies will review the reporting arrangements agreed to in this MOU. In particular, this review will focus on:

- the data provided to DEH and allow for amendments to the data items reported in either the summary reports or individual interaction reports;
- Establish the criteria to be used by DEH when requesting individual interaction reports and incorporate these in the MOU; and
- Costs incurred by AFMA in supplying interaction data reports to DEH.

Legal standing

This MOU does not create any legal relations between the two parties and no aspects are legally binding.

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as at the date indicated.

Signed on behalf of the
Australian Fisheries
Management Authority by



Richard McLoughlin,
Managing Director

Signed on behalf of the Department of
the Environment and Heritage by

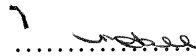


David Borthwick,
Secretary

in the presence of

in the presence of

 4/1/08



TIMOTHY SMITH
.....
(print name)

MARG HALL
.....
(print name)

SCHEDULE 1

Details of the reporting of protected species interactions
with Commonwealth managed fisheries

Information to be supplied by AFMA to DEH

Data sources:

Data will be supplied from official logbook data as provided to AFMA by concession holders. Logbook data will be provided to DEH only for boats operated by concession holders electing for AFMA to report protected species interaction data on their behalf.

Logbook data is not routinely independently verified. AFMA provides this data in good faith, but cannot attest to the accuracy of this data nor authenticate that this data is a complete record of all protected species interactions in the fishery.

Data categorisation:

By fishery:

Data will be supplied by fishery, as outlined in the following list:

- Coral Sea Fishery
- Torres Strait Finfish and Prawn Fisheries
- Southern and Eastern Scalefish and Shark Fishery (inc South east trawl; East coast deepwater trawl; Great Australian Bight trawl; and Gillnet, Hook and Trap fisheries)
- South Tasman Rise Fishery
- Norfolk Island Offshore Fishery
- Western Deepwater Trawl Fishery
- North West Slope Trawl Fishery
- Northern Prawn Fishery
- Bass Strait Scallop Fishery
- Southern and Western Tuna and Billfish Fishery
- Eastern Tuna and Billfish Fishery
- Southern Bluefin Tuna Fishery
- Small Pelagic Fishery
- Southern Squid Jig Fishery
- Sub-Antarctic (Heard Island, Macdonald Island and Macquarie Island) Fisheries
- Skipjack Tuna Fishery

By method:

Where an individual fishery incorporates more than one method, the information will be supplied by each method where it is available and practicable.

By Species:

Data will be supplied by species group (ie. seabirds, sygnathids, cetaceans etc) for all major species groups. These groups are:

- Turtles
- Sharks
- Seals and sea-lions
- Cetaceans (whales and dolphins)
- Sea birds
- Sea snakes
- Dugong
- Saltwater Crocodile
- Sygnathids
- Handfish

The data summary will provide information for individual families or species where the fishers have recorded to that level in their logbook. The following table outlines the individual families and species that will be reported where available.

| Species group | Individual family or species |
|---------------------|--|
| Turtles | Loggerhead Turtle (<i>Caretta caretta</i>) Green Turtle (<i>Chelonia mydas</i>) Leatherback Turtle (<i>Dermochelys coriacea</i>) Olive Ridley Turtle (<i>Lepidochelys olivacea</i>) Hawksbill Turtle (<i>Eretmochelys imbricata</i>) Flatback Turtle (<i>Natator depressus</i>) Other/unidentified |
| Sharks | Grey Nurse Shark (<i>Charcarius taurus</i>) Great White Shark (<i>Charcaradon carcharias</i>) Whale Shark (<i>Rhincodon typus</i>) Freshwater Sawfish (<i>Pristis microdon</i>) Speartooth Shark (<i>Glyphis sp. A</i>) Northern Rivers Shark (<i>Glyphis sp. C</i>) Other/unidentified |
| Seals and Sea-lions | Australian Sea Lion (<i>Neophoca cinerea</i>) Australian Fur Seals (<i>Arctocephalus pusillus</i>) New Zealand Fur Seal (<i>Arctocephalus forsteri</i>) Southern Elephant Seal (<i>Mirounga leonina</i>) Sub-Antarctic Fur Seal (<i>Arctocephalus tropicalis</i>) Leopard Seal (<i>Hydrurga leptonyx</i>) Crab-eater Seal (<i>Lobodon carcinophagus</i>) Weddell Seal (<i>Leptonychotes weddellii</i>) Ross Seal (<i>Ommatophoca rossii</i>) Other/unidentified |
| Cetaceans | Southern Right Whale (<i>Eubalaena australis</i>) Humpback Whale (<i>Megaptera novaeangliae</i>) Other baleen whale Sperm Whale (<i>Physeter macrocephalus</i>) False Killer Whale (<i>Pseudorca crassidens</i>) Killer Whale (<i>Orcinus orca</i>) Pilot Whale (<i>Globicephala macrorhynchus, melas</i>) Indo pacific Humpback Dolphin / Irrawaddy dolphin Bottlenose Dolphin /other small dolphin / small whale Large dolphin/small whale Other/unidentified |
| Seabirds | Albatrosses Petrels Gannets Boobies Cormorants Frigatebirds Gulls Muttonbirds Noddies Pelicans |

| | |
|------------|--|
| | Penguins Prions Skuas Shearwaters Terns Tropicbird Others/unidentified |
| Sygnathids | Pipefish Seahorses Seadragons |

Many of these species groups will not be reported at the family or species level in all fisheries. AFMA will progressively modify the individual fishery logbooks and instructions, as the logbooks are updated, to ensure consistent reporting across all fisheries.

Specific Data Items:

In the periodic summary reports, AFMA will provide DEH with the following data items as recorded in the logbooks:

- The total number of each species/species group interacted with;
- Life status for each interaction – dead; alive; injured;
- Interaction type – hooked; netted; entangled; collision; and
- Method of fishing where available.

For the individual interaction reports that DEH requests, the following additional data items will be provided:

- Location (latitude/longitude);
- Time and date;
- Whether an observer was present;
- Sex (if identified); and
- Life stage – Adult/juvenile (if identified).

Logbooks used in each fishery may vary in terms of the items collected and how the information is collected. AFMA will use the items outlined in this MOU to guide updating of logbooks, with changes to be introduced through the normal logbook updating cycle for each fishery.

How AFMA will report to DEH

Reporting period:

Data will be supplied to DEH quarterly by AFMA, to cover the periods 1 January-31 March; 1 April-30 June; 1 July-30 September; and 1 October-31 December each year. These data summaries will be supplied to DEH approximately two months following the end of the reporting period (ie. by 31 August 2005 for the period ending 30 June 2005).

Report format:

The summary report will be supplied in excel format via email to the key contact officer described in this agreement. Reports are to be sent to the following email address: epbcwild@deh.gov.au.

The information will be categorised by fishery and sub-divided into fishing method where possible. Within each fishery/sub-fishery, the reports will be by species group/family/species, with the following table providing an example layout of one of these reports.

ABC, XYZ Fishery: XYZ sub-fishery

| Species Group/ Family/Species | Individual interaction | Life/status | Interaction type |
|--|-----------------------------------|---|--|
| Seal Australian Fur Australian Fur Elephant | 3 | 2 alive; 1 dead Alive Dead Alive | 3 entangled Entangled Entangled Entangled |
| Sea-lion | 1 | Alive | Entangled |
| Dolphin (species unknown) | 2 | 1 alive; 1 dead | 2 entangled |

Mechanism for requiring additional reporting:

DEH requested report:

Based on the information contained in the periodic summary report supplied by AFMA, DEH can seek further detailed reports of individual interactions where a specific concern is identified.

The criteria/triggers to be used by DEH in requesting these reports will be determined over the first year of this agreement. This will allow triggers to incorporate any patterns or seasonal variation in the interactions. These criteria will be incorporated into this MOU through the scheduled review following 12 months of reporting.

Interaction triggered report:

When the number of interactions with certain species in any period reaches an agreed threshold level, AFMA will report to DEH as soon as AFMA is notified of such interaction. In some fisheries this will be through an immediate phone/email report, while more generally AFMA will be first notified of the interaction when the logbook data is entered into the database.

The species for which AFMA will provide this reporting are listed below, along with the threshold levels for reporting. These reports will provide the same information as presented in the periodic summary reports.

| Species group/family/species | Threshold trigger limit |
|-------------------------------------|--------------------------------|
| All whale species | 1 |
| All dolphin species | 1 |
| Great White Shark | 1 |

| | |
|------------------|---|
| Grey Nurse Shark | 1 |
|------------------|---|

Publication of Interaction reporting data:

Quarterly reports on protected species interactions will be made available on the DEH web site. These reports will contain only summary data of species/family/species group and number of animals involved in interactions during the period. Additionally these reports will combine both AFMA supplied interaction reports as well as protected species interactions reported directly to DEH by fishers and other marine users.

Before any publication or release of the data supplied to DEH, both AFMA and DEH will agree on the format of these reports, including what data is included.

The privacy of individuals and any information that is commercial in confidence will be respected and such information will not be released by DEH to any third party under any circumstances except as required by law. Prior to any such information being released as required by law AFMA will be notified immediately and, where possible, given a reasonable opportunity to contact the concession holder so that the concession holder's rights are not prejudiced and the concession holder is given a reasonable opportunity to make an informed decision as to whether they should make any representation or not to the appropriate authority, court or tribunal prior to the information being required to be released at law.