



## Commonwealth of Australia

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

I, Greg Hunt, Minister for the Environment, 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 for the State of Western Australia, and those acting on behalf of the State of Western Australia, from the application of all of the provisions of Part 3 of the EPBC Act in relation to the following action:

The setting of up to seventy two (72) baited drum lines each with a single approximately size 25/0 hook, in Western Australian state waters, and management of those lines in accordance with Schedule 2 and Addendum 1 of Request for Tender DPC 1596 (Shark Drum Line Deployment, Management and Associated Services), until 30 April 2014.

### **Legislation**

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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. 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**

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1. On 6 January 2014 I received an application from the Premier of the State of Western Australian, the Hon Colin Barnett MLA, seeking an exemption under section 158 of the EPBC Act in relation to Western Australia's proposed setting of up to 72 baited drum lines in State waters.
2. In summary, the action comprises the setting of up to 72 drum lines 1 kilometre off eight heavily utilised Western Australian beaches from approximately 10 January to 30 April 2014.
3. The drum lines would be monitored for 12 hours each day (from 6am to 6pm) and any other sharks, including white sharks, tiger sharks and bull sharks less than 3 metres, that are caught would be released alive, unless they were considered not to be in a condition to survive. This includes sharks not of the above species that are greater than 3 metres.
4. In support of the application, Mr Barnett pointed to the significant increase in shark fatalities in Western Australia over the last three years and the impact the rise in fatalities was having on the confidence of Western Australians to undertake water based activities and the resultant impact on business.
5. Further, Mr Barnett advised that Western Australia would seek to minimise environmental impacts with these efforts and that the action would complement, and be implemented in parallel with, a suite of other shark mitigation actions, including those discussed in paragraphs 14 and 15 below.

## **Evidence**

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6. The evidence or other material on which my findings were based was a brief from my Department dated 9 January 2014. That brief attached the application of 6 January 2014 from the Premier of Western Australia, including the tender documents; the recovery plan for White Sharks; and a study by the Western Australian Department of Fisheries on the risk factors associated with white shark attacks in Western Australian waters.

## Findings

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### *Increase in shark strikes and impact on public safety and water-based activities*

7. A recent study by the Western Australian Department of Fisheries (*A correlation study of the potential risk factors associated with white shark attacks in Western Australian waters*, November 2012) identified a statistically significant increasing trend in the annual incidence of shark strikes since 1995. Shark strikes have increased from, on average, less than one per annum in the mid 1990s to three strikes in each of 2010, 2011 and 2012, and two strikes in 2013. The trend is consistent when considered by calendar year or fiscal year, and is also clear when the data are pooled into two year groups (figures 1a-c of the paper). This evidence indicates that the number of White Shark strikes in Western Australia is increasing over time at a faster rate than population growth though generally the frequency of White Shark sightings reduces during the January – April period.
8. There is substantial public concern about the safety of water based activities in Western Australia, and anecdotal evidence that the frequency of shark strikes is impacting on business in Western Australia. For example, the recreational diving industry has reported substantial declines in people wishing to participate in the sport, with one dive shop stating in the media that it has experienced a greater than 90% decline in people learning to dive.
9. According to Tourism Western Australia (*Experience Perth – Overnight Visitor Fact Sheet, Years ending December 2010/11/12*) there were 3.5 million overnight visitors to the Perth region in 2012; approximately 40% of these overnight stays were for holiday or leisure purposes; going to the beach (including swimming, diving and surfing) is one of the top five leisure activities of these visitors and is undertaken by 14% of intrastate visitors, 18% of interstate visitors and 64% of international visitors.
10. Similarly for the South West region (*Australia's South West – Overnight Visitor Fact Sheet, Years ending December 2010/11/12*), there were almost 2 million overnight visitors; over 60% of these overnight stays was for holiday or leisure purposes; going to the beach (including swimming, diving and surfing) is one of the top five leisure activities of these visitors; and is undertaken by 34% of intrastate visitors, 40% of interstate visitors and 84% of international visitors.
11. In total, the Western Australian tourism industry is valued at \$8.52 billion per annum, directly employs 56,000 people and indirectly a further 33,000 people, directly accounts of 1.7% of the State economy, and indirectly a further 1.6% of the State economy (*Tourism Satellite Account, Western Australia 2011-2012, Fact Sheet*).
12. Australia is an island country with a strong beach culture where water-based activities are carried out along most of its coastlines. This beach culture is key drawcard for international visitors to Australia, as indicated by the high percentage of international visitors that participate in these activities. A loss of confidence in water-based activities impacts on tourism and other leisure-based businesses impacting on the Australian economy, making this impact a matter of national significance.
13. A reduction in public safety while undertaking water based activities is also a matter of national significance. The continued safety of Australians is a key

consideration of all Australian governments as demonstrated by the shared responsibility and national approach to many of the key factors that impact on the health and welfare of Australians. The increase in shark strikes in Western Australia's waters to well above historic norms has drawn national attention to the matter of public safety of water activities. The approaches and lessons learnt from the Western Australian trial will inform the mitigation approaches of other governments. The matter of public safety is therefore a matter of national interest.

#### *Effectiveness of non-lethal methods*

14. The Western Australian Government is investing in non-lethal approaches to manage the interaction between human users and sharks, but these approaches have not proven feasible in reducing shark strikes to date. The Western Australian Government is investing in research on electronic methods to deter sharks from surf boards, mask beach users' noise, research on shark biology associated with strikes and a separate project aimed at detecting sharks as they approach beaches.
15. Other Australian States also support research, for example on electro-magnetic shark barriers, that may reduce sharks approaching swimming beaches or beach users, but the evidence to date is that these methods require further development before they can effectively protect large areas.

#### *Issues with the proposed approach*

16. The approach proposed by the Western Australian Government is targeted at large sharks that are most likely to fatally injure humans in an unprovoked strike; the three species being targeted are considered responsible for 86% of recorded human fatalities from shark strikes worldwide. Moreover, investigation under the Queensland Shark Control Program identified that there have not been any major developments in new shark proofing technologies and that the traditional capture methods of using nets and drum lines remain the most effective measures to reduce the risk of shark strikes.
17. The Western Australian Premier in his application to me identified that his Government remained committed to continuing other shark mitigation methods and minimising the environmental impact from the proposed drum line deployment, including:
  - the use of a large hook size on the baited drum lines reducing the chance of small shark by-catch;
  - the size of the hooks and proposed use of shark as bait should reduce the targeting of the baits by other marine predators (for example sea lions);
  - the depth below water at which the hooks are proposed to be set, and the size of the hooks, should make incidental catch of seabirds unlikely;
  - the timing of the proposed deployment is before most Humpback Whales and Southern Right Whales will occur in Western Australian waters;
  - the monitoring of the drum lines will assist in identifying any other entanglements of cetaceans or sea turtles; and
  - that the Western Australian Department of Parks and Wildlife has recognised expertise in the disentanglement of marine wildlife.

18. The Premier also advised me that the program will be assessed throughout and after its operation by relevant stakeholders; including technical experts and that records of catches would be shared with my Department.

*Timeliness of implementation and interaction with the EPBC Act*

19. The warmer months of the year are the period when there is the greatest use of Western Australian waters by the public. In order to provide confidence to the public about the safety of water based activities additional shark mitigation measures are needed at the time of greatest use, which is over the summer and autumn months. Requiring the Western Australian Government to comply with the processes under the EPBC Act for referral for the action and potential assessment and approval would likely prevent the deployment of drum lines until after the peak period of use of the marine environment.

**Reasons**

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20. In light of the matters discussed in paragraphs 7 - 19 above, I was satisfied that it was in the national interest that all of the provisions of Part 3 of the EPBC Act not apply in relation to the deployment and management of up to 72 drum lines as described in the above action.
21. Accordingly, I decided to exempt the State of Western Australia, and those acting on behalf of the State of Western Australia, from the application of all of the provisions of Part 3 of the EPBC Act in relation to the action described above.
22. Shark mitigation activities other than those in the action described above are not covered by this exemption. Therefore, if those activities have, will have, or are likely to have, a significant impact on a matter protected by Part 3 of the EPBC Act, they will require assessment and approval under the EPBC Act.
23. Failure to abide by the terms set out in paragraph 17 and my accompanying letter to Premier Barnett will give cause for review and possible revocation of the exemption.



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**Minister for the Environment**

15 / 1 / 2014

