



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 of 2 October 2014 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 and from section 74AA of the EPBC Act in relation to the following action:

The deployment of fishing gear in Western Australian state waters to catch a shark posing an imminent threat to public safety as defined in the Western Australian Department of Fisheries *Guidelines for fishing for sharks posing an imminent threat to public safety*, and that is to be monitored throughout their deployment, for up to three (3) days (which includes the date of this notice).

Legislation

Section 74AA of the EPBC Act which provides:

74AA Offence of taking action before decision made in relation to referral etc

Referral made: taking action while decision making process still going on

(1) A person commits an offence if:

(a) the person takes an action; and

(b) either:

(i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or

(ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and

(c) the referral has not been withdrawn under section 170C; and

(d) the Minister has not decided under subsection 74A(1) not to accept the referral; and

- (e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and
- (f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and
- (g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and
- (h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Section 158 of the EPBC Act which 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

1. On 7 April 2014 the Western Australian Government referred a proposal to deploy baited drum lines to catch large sharks in Western Australian state waters, including in response to an imminent threat (EPBC 2014/7174) (**shark hazard mitigation drum line proposal**). On 7 May 2014 I determined that the proposed action was a controlled action in accordance with section 75 of the EPBC Act and required assessment and approval before it could proceed. This assessment is currently underway.

2. On 2 October 2014 I received an application from the Premier of the State of Western Australia, the Hon Colin Barnett MLA, seeking an exemption under section 158 of the EPBC Act in relation to Western Australia's proposed deployment of fishing gear in state waters to attempt to capture and destroy a shark that had had been involved in an incident and was remaining in the area posing a significant threat to public safety.
3. The application for the exemption was submitted following an incident on 2 October 2014 in which a surfer was inflicted with serious injuries by an unknown species of shark at Wylie Bay near Esperance in southern Western Australia. The application for an exemption noted that the shark was believed to still be in the area, potentially posing a significant threat to public safety.
4. The application notes that although the species of shark involved in the incident is unknown, white sharks have been known to frequent the general area.
5. The proposed action would comprise the deployment of fishing gear by Western Australian Department of Fisheries staff, for a period of not more than three days, to attempt to capture and destroy the shark responsible.
6. The application notes that, as the Western Australian Government's shark hazard mitigation drum line proposal is still being assessed under the EPBC Act and state *Environment Protection Act 1986* (EP Act), exemptions are required to be able to deploy fishing gear before final decisions are made on the proposal. The application further notes that the State Minister for the Environment has already provided an exemption under Part IV of the EP Act.
7. In the application, Premier Barnett states his belief that the shark involved was compromising the utility and amenity of Western Australian beaches, and that this one incident, combined with the previous state, national and international attention to sharks off the Western Australian coast has an impact on the State's tourism and economy, and ultimately Australia's international reputation. The Premier also states his belief that the continued presence of this shark in the area, especially at the time of school holidays, poses a significant threat to public safety.

Evidence

8. The evidence or other material on which my findings were based was a brief from my Department dated 2 October 2014, and earlier material provided by my Department in a brief on 23 June 2014. The brief of 2 October 2014 attached the application of 2 October 2014 from the Premier of Western Australia.

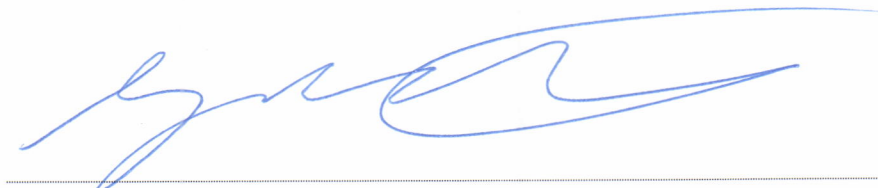
Findings

9. A shark-related incident resulting in serious injury to an individual occurred on 2 October 2014 at Wylie Bay near Esperance in Western Australia. I found that the continued presence of the shark near the beach represented an ongoing and imminent threat to public safety, consistent with the Western Australian definition of an imminent threat according to their *Guidelines for fishing for sharks posing and imminent threat to public safety*.
10. The proposal to deploy fishing gear to attempt to capture the shark was an action covered by the assessment underway for the Western Australian shark hazard mitigation drum line program (EPBC 2014/7174).

11. The Western Australian coastline off Esperance is within the known foraging area for white sharks, as identified in the Recovery Plan for the White Shark (*Carcharodon carcharias*).
12. There is significant public concern about the safety of water based activities in Western Australia. I found that the safety of the public in undertaking water based activities is a matter of significance for the Australian public and the Governments of Australia.
13. Australia is an island country with a strong beach culture where water based activities are carried out along most of its coastlines. In many of these areas there is a risk of shark attack and consequent loss of confidence in water-based activities and impact on business. Therefore, I found that the public safety of water activities is a matter of national interest.
14. I found that going to the beach (including swimming, diving and surfing) is one of the most common leisure activities of intrastate visitors, interstate visitors and international visitors to Western Australia, according to Tourism Western Australia.
15. 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, according to Tourism Western Australia.
16. I found that accounts of the incident at Esperance on 2 October 2014 were reported in national and international media.

Reasons

17. I believe that the tragic events of 2 October 2014 at Wylie Beach clearly demonstrated there was a tangible, obvious and imminent threat to the lives and safety of the public and that the State Government required the ability to take immediate action to reduce this threat. Public safety and the protection of human life are paramount responsibilities of federal and state governments and a matter of national interest, and this was the key consideration in my decision.
18. In light of the matters discussed in paragraphs 1 to 17 above, I was satisfied that it was in the national interest that all of the provisions of Part 3 and section 74AA of the EPBC Act not apply in relation to the deployment of fishing gear as described in the above action.
19. 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 and section 74AA of the EPBC Act in relation to the action described above.



Minister for the Environment

15 / 10 / 2014