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Department of
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Regional Development**

Fisheries Management Paper No. 295

Amendments to the 1995 Offshore Constitutional Settlement

Lindsay Joll, Tim Nicholas, Nick Blay

October 2019

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CONTENTS

| | |
|---|-----------|
| 1.0 INTRODUCTION | 1 |
| 2.0 CHANGES TO THE OCS ARRANGEMENTS..... | 4 |
| 2.1 THE 1998 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’ | 4 |
| 2.2 THE 2017 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’ | 4 |
| 2.3 THE 2018 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’ AND TERMINATION OF THE ARRANGEMENT REGARDING THE JOINT AUTHORITY DEMERSAL GILLNET AND LONGLINE FISHERY SOUTH OF 33° SOUTH..... | 4 |
| 2.4 Amendment of the “General Arrangement’ | 5 |
| 2.5 Termination of the JASDGL Fishery Arrangement | 6 |
| 3.0 CHANGE TO THE MOU | 6 |
| 4.0 CONCLUSION | 7 |
| 5.0 REFERENCES | 7 |
| 6.0 APPENDIX A | 8 |
| 7.0 APPENDIX B | 16 |

Abstract

In 1995, the Commonwealth and Western Australian (WA) Governments agreed to a new set of arrangements for the management of commercial fisheries in waters adjacent to the State, replacing an earlier (1988) set of arrangements. The set of five arrangements, collectively known as the Offshore Constitutional Settlement (OCS), is a legal agreement that determines which jurisdiction has management for particular commercial fisheries in waters off WA.

The 1995 arrangements have generally worked well and have underpinned fisheries management in waters adjacent to WA. However, over time, some areas of the arrangements have required adjustment. This paper sets out what those changes have been and why they were made, so that the ongoing status of, and rationale for, the jurisdictional arrangements between the Commonwealth and WA Governments can readily be determined.

1.0 INTRODUCTION

The 1995 Offshore Constitutional Settlement (OCS), described in Brayford and Lyon (1995), is a set of arrangements agreed between the Commonwealth and the Western Australian (WA) Government that sets out the jurisdictional arrangements for the management of commercial fisheries in “waters relevant to Western Australia” (i.e. coastal waters and waters of the Australian Fishing Zone [AFZ] adjacent to the State). All the other States and the Northern Territory also have Offshore Constitutional Settlement arrangements with the Commonwealth of various kinds regarding commercial fisheries in adjacent waters.

The full description of the waters adjacent to WA is set out in Schedule 1, item 5 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*¹. In essence the waters include the area from the WA/South Australian border on the south coast around to the WA/Northern Territory border on the north coast out to AFZ boundary. On the south coast the boundary between WA and SA is a southerly extension of the WA/SA border to the AFZ boundary. On the north coast the boundary between WA and the NT is a line that runs roughly north of the intersection of the WA/NT border at the low water mark on the coastline to a point about 15 nautical miles off the coast and then trends north-westerly through a series of latitude/longitude co-ordinates until it reaches the AFZ boundary.

The power to make the arrangements is embodied in the Commonwealth’s *Fisheries Management Act 1991* (FMA) (Part 5) and in WA’s *Fish Resources Management Act 1994* (FRMA) (Part 3). WA’s new (but not yet operational) *Aquatic Resources Management Act 2016* also contains head powers to make such arrangements. Originally the arrangements required approval by the Governor-General and the WA Governor, but amendments to the Commonwealth and WA Acts in 2009 provided that Ministers could agree to OCS arrangements in their own right.

The arrangements represent a rational decision by the two Governments to allow for cost-effective, practical and sustainable management of fisheries resources in waters adjacent to the State. In the absence of the arrangements, WA would only have jurisdiction for internal waters (estuaries, rivers and lakes) and marine waters to the limits of Coastal Waters (sometimes called State Waters).

Coastal waters are generally three nautical miles from the Territorial Sea Baseline (TSB), which is normally the Low Water Mark on the coast. However, in some areas, the TSB is artificially set by a series of lines joining up a group of offshore islands or a straight line joining two adjacent headlands. In the absence of any OCS arrangements, waters from the Coastal Waters boundary to the AFZ boundary would fall under Commonwealth jurisdiction.

¹ The area was originally described by Schedule 2 of the *Petroleum (and Submerged Lands) Act 1967* but, as a result of the repeal of that Act, is now described in the “Scheduled area for Western Australia” in Schedule 1, item 5 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Without the agreed arrangements between the State and the Commonwealth, commercial fishers operating in both State and Commonwealth Waters would need to be licensed by both jurisdictions and, potentially, different sets of rules could apply in the different jurisdictional areas.

Amendments to Commonwealth and State fisheries legislation were made in 1983 to facilitate improved management and licensing arrangements for fisheries operating in Commonwealth and State waters.

In 1988 this approach to rationalising licensing and management arrangements was extended through the development of, and agreement to, a set of OCS arrangements covering 15 fisheries (Anon 1988). This resulted in the various fisheries being managed by either the Commonwealth under Commonwealth law, by WA under WA law or by the WA Fisheries Joint Authority [WAFJA] (composed of the Commonwealth and WA Ministers responsible for fisheries) under WA law.

While the 1988 set of arrangements was generally considered to be an improvement on the earlier situation, the experience gained as a result of the operation of the arrangements was that the balance and scope of the jurisdictional arrangements could be further improved. As a result, a new set of arrangements was developed and agreed and came into place on 1 February 1995 by gazettal in *Commonwealth of Australia Gazette GN 4* (pages 336 – 365).

The 1995 OCS is a set of standalone arrangements on a range of fishery management and resource sharing matters. In particular, the arrangements are:

1. An arrangement between the Commonwealth and the State of Western Australia in relation to the fishery for tuna and tuna like species (managed by the Commonwealth under Commonwealth law). GN 4 pp. 336 – 340.
2. An arrangement between the Commonwealth and the State of Western Australia in relation to the northern prawn fishery (managed by the Commonwealth under Commonwealth law). GN 4 pp. 341 – 344.
3. Arrangement between the Commonwealth and the State of Western Australia in relation to the northern shark fishery in waters east of Koolan Island (managed by the WAFJA under WA law). GN 4 pp. 345 – 348.
4. Arrangement between the Commonwealth and the State of Western Australia in relation to the Joint Authority Demersal Gillnet and Longline fishery in waters south of 33° South (managed by the WAFJA under WA law). GN 4 pp. 349 – 352. (Note: now terminated).
5. Arrangement between the Commonwealth and the State of Western Australia in relation to the fishery for fish and other aquatic biological resources in waters relevant to Western Australia (managed by WA under WA law). GN 4 pp. 353 – 365.

The arrangement for ‘fish and other aquatic biological resources’ (sometimes referred to as the ‘General Arrangement’ because of its broad scope) essentially gives WA management responsibility for all the fish and aquatic resources not covered by the other arrangements – but also includes some exceptions to WA management articulated within the arrangement itself. The exceptions relate to trawling in waters outside the 200m isobath (i.e. the North West Slope Trawl Fishery [NWSTF], the Western Deepwater Trawl Fishery [WDWTF] and the Great Australian Bight [GAB] Trawl Fishery [now the GAB Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery [SESSF]) and the take (by any means) of five species of small pelagic fish in waters ‘seaward of the coastal waters of the State’ (i.e. outside State waters). In waters south of 31°S, this activity is regulated by the Commonwealth’s Small Pelagic Fishery. All of these fisheries/species covered by these exceptions are managed by the Commonwealth under Commonwealth law.

The arrangements are supported by a Memorandum of Understanding (MOU) detailing the catch limits of fish for fishers licensed by each jurisdiction which are within the scope of the other jurisdiction (i.e. cross-jurisdictional bycatch), as well as setting out matters related to the responsibilities of the parties. The MOU is styled as being “with respect to the fishery for tuna and tuna like species”, although in practice it also deals with the cross-jurisdictional bycatch of species covered in the ‘General Arrangement’. The outcomes with regard to cross-jurisdictional bycatch are set out in Brayford and Lyon (1995). The MOU is reproduced in this publication for reference (Appendix A).

The 1995 arrangements have generally worked well and have underpinned fisheries management in WA. Over time, some areas of the arrangements have required adjustment and there has also been one change to the MOU. This paper sets out what those changes have been and why they were made, so that the ongoing status of, and rationale for, jurisdictional arrangements between the Commonwealth and WA Governments can be readily determined.

2.0 CHANGES TO THE OCS ARRANGEMENTS

2.1 THE 1998 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’

The 1998 amendment of the ‘General Arrangement’ (*Commonwealth of Australia Gazette, Government Notices 38 [23 September 1998] pp. 3200 – 3205*) gave effect to the intent of (but still not yet in force) 1997 Perth Treaty between Australia and Indonesia on maritime boundaries with regard to the area of the NWSTF by amending the schedule describing the area of that fishery. By deleting paragraph 2(b) of the agreement it also resolved confusion about whether the areas of the various Commonwealth deep water trawl fisheries were “on the seaward side of the 200m isobath” or within the boundaries specified by the particular co-ordinates/geodesics in Schedule 1 of the 1995 arrangement. The amendment also corrected a drafting error in the original schedule relating to the area of the GAB Trawl Fishery (which described the area of the fishery as a straight line).

The outcome of the 1998 amendment was that the areas of the three Commonwealth deep water trawl fisheries were specified as being within the boundaries of the original schedule (WDWTF) or the amended schedules (NWSTF and GAB Trawl Fishery). The area of the NWSTF was also reduced to accommodate the 1997 Perth Treaty and there were some minor changes to its boundary to better align it with the 200m isobath. In making the 200m isobath changes an error occurred in the description of the isobath, giving the fishery access to waters as shallow as about 70m in an area north west of Broome (see below - 2017 Amendment).

2.2 THE 2017 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’

The 2017 amendment followed extensive liaison and consultation between the State and the Commonwealth regarding the need for a new schedule of co-ordinates to better describe the 200m isobath for the WDWTF and the NWSDWTF (in line with new hydrographic data) to give better effect to the intent of the original OCS arrangements, as well as the need to correct the error in the description of the isobath arising from the 1998 amendment.

The amendment also changed the datum used to reference the geographical co-ordinates in the ‘General Arrangement’ (as amended) to the current Australian Geodetic Datum (GDA 94).

2.3 THE 2018 AMENDMENT OF THE ‘GENERAL ARRANGEMENT’ AND TERMINATION OF THE ARRANGEMENT REGARDING THE JOINT AUTHORITY DEMERSAL GILLNET AND LONGLINE FISHERY SOUTH OF 33° SOUTH

The primary purpose of the 2018 amendment (*Commonwealth of Australia Government Notices Gazette C2018G00618*; published 06/08/2018) was to transfer the management of the Joint Authority Southern Demersal Gillnet and Longline (JASDGL) Fishery from the WAFJA to WA.

The decision to transfer the management came about because WA and Commonwealth formed the view that management of the fishery no longer required the direct involvement of the Commonwealth through the office of the Commonwealth Minister, and that matters of any interactions between this fishery and Commonwealth-managed fisheries, in waters to the east of the JASDGL Fishery, could be managed through an MOU between the jurisdictions and complementary harvest strategies.

The mechanics of the process required that the arrangement regarding the JASDGL Fishery south of 33° south be terminated and that the reference to the JASDGL Fishery being managed by the WAFJA in the ‘General Arrangement’ be removed.

2.4 Amendment of the “General Arrangement”

As well as the change in the management arrangements for the JASDGL Fishery, the 2018 amendment of the ‘General Arrangement’ effected a number of ‘housekeeping’ and procedural matters.

In detail, the changes were:

1. Insertion of a new schedule to describe the area of the GAB Trawl Fishery consistent with the description of the GAB Trawl Sector in the SESSF management plan.
2. Correction of the schedule relevant to the Joint Authority Northern Shark Fishery referred to in the 1995 agreement (from Schedule 3 to Schedule 4).
3. Deletion of paragraph (2e), which excepted the JASDGL Fishery from WA management and provided for it to be managed by the WAFJA, as well as Schedule 3, which set out the area of the JASDGL Fishery.
4. Reconfirmation of the right of State-licensed fishers to take fish otherwise within the Commonwealth’s tuna and tuna-like and small pelagic species arrangements and the Joint Authority Northern Shark arrangement (because of the deletion of the JASDGL Fishery from the listed group of Commonwealth and WAFJA fisheries).
5. Re-phrasing and reconfirming the rights of the Commonwealth and State Ministers to make agreements about the quantity of fish in a fishery under the management of the Commonwealth that could be taken by fishers licensed by the other jurisdiction.
6. Correcting an error in the heading of Schedule 4 (“Northern Shark Fishery” to “Joint Authority Northern Shark Fishery”).
7. Confirming that existing agreements for the take of fish managed by one jurisdiction by the other jurisdiction continue to be in force.

The gazettal provided for the amendment to commence on 1 December 2018.

2.5 Termination of the JASDGL Fishery Arrangement

Moving the JASDGL Fishery from WAFJA management under WA law to WA management under WA law also required that the relevant arrangement (pp. 349 – 352) in the 1995 set of arrangements be terminated. The termination agreement (*Commonwealth of Australia Government Notices Gazette C2018G00617*; published 06/08/2018) ended the arrangement for the JASDGL Fishery to be managed by the WAFJA under WA law. The gazettal provided for the termination to be effective as of 1 December 2018.

An outcome of the termination, and the transfer of the (now) Southern Demersal Gillnet and Demersal Longline Fishery to WA management, was that a new, WA Minister-approved, management plan was required for the fishery (and that new managed fishery licences be granted under that plan). This was because the effect of s.22(5) of the FRMA is that all instruments (in this case the management plan, licences etc.) relevant to the operation of the former JASDGL Fishery cease to have effect once the arrangement is terminated.

The 2018 amendment and termination were agreed in July 2018 (published 6 August 2018) and came into effect on 1 December. This provided time for the consultative and administrative processes of developing the new management plan and the issuing of new managed fishery licences.

3.0 CHANGE TO THE MOU

The 1995 MOU has provided the basis for each jurisdiction to manage cross-jurisdictional bycatch taken by fishers licensed by the other jurisdiction. The provisions are enforced by each jurisdiction using various instruments (e.g. Regulation 18 of the FRMA for the WA catch of Commonwealth species; conditions on permits or statutory fishing rights for the Commonwealth catch of WA species).

As with the OCS arrangements, the MOU has generally worked well. In the Commonwealth's Western Tuna and Billfish Fishery (WTBF), however, the bycatch limit of Dolphinfish (or Mahi Mahi) (as part of a 10 fish trip limit for the mixed species group that includes Dolphinfish) was causing an issue. Catches of considerably more than 10 Dolphinfish were sometimes being experienced on the longline gear used in the fishery and operators were having to discard (already dead) fish.

The catch levels being taken by WTBF operators did not represent a sustainability or resource sharing issue, but the discarding of fish represented a loss of value and the waste of a resource. In recognition of the issue the State and Commonwealth Ministers of the day agreed to change the MOU to provide for a separate trip limit of 200 Dolphinfish, while retaining the 10 fish trip limit for other species in the group.

The exchange of letters setting out that agreement is at Appendix B. The Australian Fisheries Management Authority then amended the conditions applicable to WTBF operators to allow for the increased trip limit.

4.0 CONCLUSION

The 1995 OCS arrangements provide the platform for the rational management of commercial fishery activities in waters off Western Australia – either by the Commonwealth, WA or the WAFJA. The OCS arrangements (including the associated MOU) are, however, “living” documents, that are continuously under review to ensure cost-effective, practical and sustainable management of fisheries resources in waters adjacent to the State. Consequently, from time-to-time, there may be changes to the arrangements, or the MOU, to ensure that they deliver appropriate and practical outcomes.

This paper sets out the changes (and the reasons for the changes) that have occurred since the arrangements were agreed, to ensure transparency as to the status of the arrangements and the reasons for the changes.

5.0 REFERENCES

Anon 1988. The Offshore Constitutional Settlement Western Australia 1988. Fisheries Management Paper 20. 36pp. Fisheries Department of Western Australia.

Brayford H.B. and Lyon G.E. 1995. Offshore Constitutional Settlement 1995. Fisheries Management Paper 77. 46pp. Fisheries Department of Western Australia. (re-printed in 1996 with changes to the figures to correctly identify the WA/NT jurisdictional boundary).

6.0 APPENDIX A

Memorandum of Understanding to the 1995 OCS agreements

MEMORANDUM OF UNDERSTANDING

between

THE COMMONWEALTH OF AUSTRALIA

and

THE STATE OF WESTERN AUSTRALIA

WITH RESPECT TO

THE FISHERY FOR TUNA AND TUNA LIKE SPECIES

INTRODUCTION

1. This Memorandum of Understanding describes the working relationship between the Australian Fisheries Management Authority (AFMA) and the Fisheries Department of Western Australia, hereinafter referred to as "the parties", with regard to co-operative management arrangements and the control of bycatch of fish which otherwise are managed
 - (a) under State or Joint Authority jurisdiction but are taken by fishermen operating under a fishing concession granted by AFMA for tuna and tuna like species in all waters off Western Australia, or
 - (b) under Commonwealth jurisdiction but are taken by fishermen operating under a fishing concession granted by the State or Joint Authority for species other than tuna and tuna like species in all waters off Western Australia.
2. The parties recognise the responsibilities, respect the integrity and acknowledge the professional capabilities of each of the parties which in the spirit of cooperation, will afford such assistance and advice to each other as is necessary to facilitate the effective accomplishment of the stated objectives.

COMMENCEMENT

3. This memorandum commences on the date of signature by both parties of this Memorandum.

INTERPRETATION

4. In this Memorandum:

"billfish" means fish of the families Istiophoridae and Xiphiidae;

"bycatch" means any fish or aquatic life that is taken with the authorised gear being used to fish for the target species;

"ecologically sustainable development" means development carried out in a way that maintains biodiversity and the ecological processes on which fisheries resources depend and that maintains and improves the total quality of present and future life;

"fishing concession" means any State or Commonwealth statutory fishing right, permit or licence allowing participation in a fishery;

"Joint Authority" means an authority established by or under section 61 of the *Fisheries Management Act 1991*;

"OCS Arrangement" means an arrangement under section 72 of the *Fisheries Management Act 1991* (the Management Act);

"trip limits" mean the maximum number of, or weight of, fish which can be on board the boat named on the fishing concession at any point in time";

"tuna and tuna like species" means the fishery for

- (a) yellowfin tuna (*Thunnus albacares*)
- southern bluefin tuna (*Thunnus maccoyii*)
- bigeye tuna (*Thunnus obesus*)
- longtail tuna (*Thunnus tonggol*)
- albacore tuna (*Thunnus alalunga*)
- northern bluefin tuna (*Thunnus thynnus*)
- skipjack tuna (*Katsuwonus pelamis*)

and those fish taken in the exercise of a right conferred by a concession granted by the Australian Fisheries Management Authority under the Management Act allowing the taking of the above species.

- (b) fish of the family Bramidae (pomfrets) seaward of the 200m isobath for all methods
- (c) fish of the families Istiophoridae and Xiphiidae (billfish)
- (d) fish taken as bait (dead or alive) by a person for his or her own use, other than in fish farms, in the exercise of a fishing concession granted by the Australian Fisheries Management Authority under the Management Act to take tuna and tuna like species as listed above.

LEGISLATION

6. This Memorandum is to be read in conjunction with:

- Commonwealth and Western Australian legislation, and all subordinate legislation, relating to the definition, administration or management of marine resources in all waters relevant to Western Australia, including:

Fisheries Management Act 1991 (Commonwealth)
Fisheries Administration Act 1991 (Commonwealth)
Fisheries Act 1905 (Western Australia) (until repealed)
Pearling Act 1990 (Western Australia)
Fish Resources Management Act 1994 (Western Australia) (when enacted);

- the OCS Arrangement between the Commonwealth of Australia and the State of Western Australia in relation to the fishery for tuna and tuna like species;

- the OCS Arrangement between the Commonwealth of Australia and the State of Western Australia in relation to the Northern Prawn Fishery;
- the OCS Arrangement between the Commonwealth of Australia and the State of Western Australia in relation to the fishery for fish and other aquatic biological resources in waters relevant to Western Australia;
- the OCS Arrangement between the Commonwealth of Australia and the State of Western Australia in relation to the Northern Shark Fishery in waters east of Koolan Island;
- the OCS Arrangement between the Commonwealth of Australia and the State of Western Australia in relation to the Demersal Gillnet and Longline Fishery in waters south of Latitude 33° South.

POLICIES

7. Off Western Australia, the only formally managed tuna and tuna like species fishery is the Southern Bluefin Tuna Fishery.
8. AFMA is currently developing management arrangements for the Western Tuna and Billfish Fishery (WTBF). This fishery covers tuna and billfish fishing not covered by the East Coast Tuna and Billfish Fishery and Southern Bluefin Tuna Fishery management arrangements. It is a limited entry fishery which is managed by input controls. A management plan for the fishery is currently being developed and is expected to be introduced in mid-1996.

RESPONSIBILITIES

9. AFMA has responsibility for the management of tuna and tuna like species in all waters off Western Australia to the extent of the Australian fishing zone, including internal waters. This management responsibility extends to the management of, and ensuring compliance with, bycatch provisions as set out in this Memorandum.
10. The State of Western Australia generally has responsibility for the management of all bony and cartilaginous fishes and all species of aquatic invertebrates in waters relevant to Western Australia on the landward side of the 200 nautical mile limit of the Australian fishing zone except for:
 - (a) tuna and tuna-like species;
 - (b) all fish and aquatic invertebrates taken by means of trawling on the seaward side of the 200 metre isobath;
 - (c) prawns, squid taken by prawn trawl apparatus, and bycatch taken in the Northern Prawn Fishery;
 - (d) all fish and aquatic invertebrates taken in the Northern Shark and the Southern Demersal Gillnet and Longline fisheries; and
 - (e) jack mackerel species, blue mackerel and red bait outside coastal waters

unless the fish specified in paragraphs (a), (b), (c), (d) and (e) are taken in the exercise of a right conferred by a licence or other authority granted by the State for the fish to which this paragraph applies.

OBJECTIVES

11. The objectives of this Memorandum are:

- to provide a mechanism for co-operation and collaboration in the management of the fisheries resources in waters relevant to the State of Western Australia having regard to the principles of ecologically sustainable development through the management of bycatch taken in conjunction with fishing for tuna and tuna like species;
- to recognise the importance of fisheries resources to the parties, including existing fisheries and developing fisheries and their management arrangements; and
- to recognise the value of co-operation between the parties in sustainable development of fisheries resources.

OBLIGATIONS OF THE PARTIES

12. In pursuit of the objectives of this Memorandum the parties undertake to:

- make available, in an appropriate form, information related to fisheries of mutual interest including:
 - fishery catch and effort data from Western Australian and Commonwealth boats as it pertains to bycatch;
 - the results of scientific research including ecological studies, population dynamics, stock distribution, abundance and assessment of sustainable yield;
 - monitoring control and surveillance systems for fishing activities in waters relevant to Western Australia;
 - economics, marketing, gear technology and other studies relating to the management of the fisheries;
 - proposed management regimes for existing and developing fisheries;
- co-operate on monitoring and re-assessment of bycatch levels;
- co-operate and exchange information on technological developments in the fishing industry relating to the taking of tuna and tuna like species;
- co-operate in the identification of research, monitoring and surveillance programs as they relate to the fishery for tuna and tuna like species;

- co-operate for the development of mechanisms which provide for appropriate and timely responses to changing circumstances;
- consult each other on any proposal which would have the effect of significantly expanding the effort in a fishery of mutual interest.

13. In pursuit of the objectives of this Memorandum, the State of Western Australia will manage the following Commonwealth trip limits for State concession holders:

- Nil

| | |
|-----------------------|--------------------------------------|
| Southern Bluefin tuna | <i>Thunnus maccoyii</i> |
| Northern Bluefin tuna | <i>Thunnus thynnus</i> |
| Billfish | families Istiophoridae and Xiphiidae |

- Trip limit of no more than 2 fish in total

| | |
|----------------|--------------------------|
| Yellowfin tuna | <i>Thunnus albacares</i> |
| Bigeye tuna | <i>Thunnus obesus</i> |

- Trip limit of no more than 10 fish in total

| | |
|--------------------------|---------------------------------|
| Skipjack tuna | <i>Katsuwonus pelamis</i> |
| Albacore tuna | <i>Thunnus alalunga</i> |
| Longtail tuna | <i>Thunnus tonggol</i> |
| Greenback jack mackerel | <i>Trachurus declivis</i> |
| Peruvian jack mackerel | <i>Trachurus murphyi</i> |
| Blue mackerel | <i>Scomber australasicus</i> |
| Redbait | <i>Emmelichthys nitidus</i> |
| Yellowtail jack mackerel | <i>Trachurus novaezelandiae</i> |
| Pomfrets, fanfishes | family Bramidae |

14. In pursuit of the objectives of this Memorandum, the Commonwealth will manage the following trip limits for Commonwealth concession holders:

- Trip limit of no more than 2 fish in total

| | |
|---------------------|-------------------------|
| Yellowtail kingfish | <i>Seriola lalandi</i> |
| Amberjack | <i>Seriola dumerili</i> |

- Trip limit of no more than 10 fish in total

| | |
|-----------------------------|-----------------------------------|
| Spanish mackerel | <i>Scomberomorus commerson</i> |
| Australian spotted mackerel | <i>Scomberomorus munroi</i> |
| Mackerel tuna | <i>Euthynnus affinis</i> |
| Frigate mackerel | <i>Auxis thazard</i> |
| Shark mackerel | <i>Grammatorcynus bicarinatus</i> |
| Rake gilled mackerel | <i>Rastrelliger kanagurta</i> |
| Australian bonito | <i>Sarda australis</i> |

| | |
|-----------------------------|---|
| Oriental bonito | <i>Sarda orientalis</i> |
| Leaping bonito | <i>Cybiosarda elegans</i> |
| Rainbow runner | <i>Elagatis bipinnulata</i> |
| Dog toothed tuna | <i>Gymnosarda unicolor</i> |
| Emperors, tropical snappers | family Lutjanidae |
| Emperors | family Lethrinidae |
| Cods, groupers | family Serranidae |
| Wrasses, tuskfishes | family Labridae |
| Trevallies | family Carangidae except for genus <i>Seriola</i> |
| Dolphinfish | <i>Coryphaena hippurus</i> |
| Snapper | <i>Pagrus auratus</i> |
| Blue eye trevalla | <i>Hyperoglyphe antarctica</i> |
| Hapuka | <i>Polyprion oxygeneios</i> |
| Bar cod | <i>Polyprion moeone</i> |

- Trip limit of no more than 20 fish in total

| | |
|--------------------|---|
| Slender tuna | <i>Allothenus fallai</i> |
| Wahoo | <i>Acanthocybium solandri</i> |
| Butterfly mackerel | <i>Gasterochisma melampus</i> |
| Sharks | subclass Elasmobranchii and family Serranidae |

15. The Commonwealth agrees that it will not issue fishing concessions specifically for the targetting of billfish.

16. The parties agree that

(a) within six months of this MOU, a joint statement will be developed covering the:

- establishment of programs for formal consultation on research, management, monitoring and surveillance activities, including provision for consultations between officials on an annual basis or sooner at the request of either party; and
- establishment of procedures for formal consultation with stakeholders on fisheries management arrangements for the fishery for tuna and tuna like species;

(b) any joint statement to be the subject of ongoing review.

17. The parties will work together with the State of Queensland and the Northern Territory for the development of mechanisms which provide for appropriate and timely responses to changing circumstances.

18. The parties acknowledge that this Memorandum complements the OCS Arrangement for tuna and tuna like species and that any departure by either party from the terms or spirit of this Memorandum may fundamentally alter the overall

management arrangements for the fishery and trigger consideration by the other party of initiating either a withdrawal or variation of the OCS Arrangement.

FUNDING ARRANGEMENTS

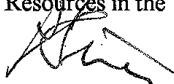
19. Each party will bear its own costs in giving effect to this Memorandum, unless otherwise agreed.

AMENDMENT

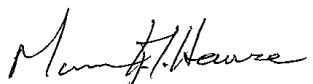
20. This Memorandum may be varied by written instrument signed by, or on behalf of, either or both signatories to this Memorandum.
21. Either party may revoke this Memorandum by giving written notice to the other party that the party giving the notice desires the Memorandum to terminate upon a date specified in the notice, not being earlier than 6 months after the day on which the notice is given.

Dated this 25 day of January 1995

Signed for and on behalf of the
Commonwealth of Australia by the
Honourable DAVID PETER BEDDALL,
Minister for Resources in the
presence of




Signed for and on behalf of the
State of Western Australia by the
Honourable MONTAGUE GRANT HOUSE,
Minister for Fisheries in the
presence of

7.0 APPENDIX B

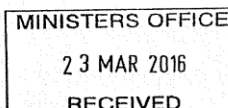
Change to the 1995 MOU to vary the trip limit for Dolphinfin (Mahi Mahi) by Commonwealth fishers in the Western Tuna and Billfish Fishery.

1. Letter from Commonwealth Minister to State Minister proposing the change.



Senator the Hon. Anne Ruston

Assistant Minister for Agriculture and Water Resources
Senator for South Australia



Ref: MS16-000731

17 MAR 2016

The Hon. Ken C. Baston MLC
Minister for Food and Agriculture; Fisheries
7TH Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear *Ken* Minister,

I am writing to you about the trip limit of Mahi Mahi in Western Australian waters in the Western Tuna and Billfish Fishery (WTBF). Currently, Mahi Mahi landings, along with a number of other species, are limited to a total of 10 fish per trip in the WTBF.

Your Department and the Australian Fisheries Management Authority (AFMA) have been approached by industry members to increase the trip limit due to concerns about the waste of a non-target but valuable marketable fish.

I understand that the Western Australian Fisheries Industry Council has consulted with Recfish West and has proposed to increase the current trip limit for Mahi Mahi. I have been advised Recfish West support an upper trip limit of no more than 200 Mahi Mahi, be applied within this fishery.

Given that the current limit was agreed in a Memorandum of Understanding between the Commonwealth and Western Australian Fisheries Ministers, I am writing to seek your agreement to amend the Memorandum of Understanding (Attachment A) to increase the Mahi Mahi trip limit to 200 fish. No other trip limits will be changed.

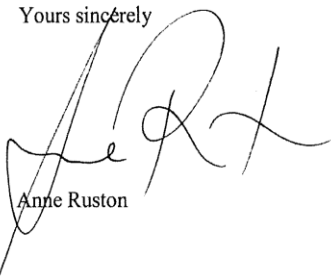
To implement this increase, AFMA proposes to remove Mahi Mahi from the current mixed fish limit and impose a 200 fish species specific trip limit on Mahi Mahi.

Implementing this change is unlikely to increase the number of Mahi Mahi killed during WTBF operations, but will likely allow boats to retain all the Mahi Mahi they take. This will increase revenue to the fishery and increase the supply of quality local fish to the Perth market.

Parliament House, Canberra ACT 2600 Tel: 02 6277 3753 Fax: 02 6277 5825 Email: assistant.minister@maff.gov.au

If you have any questions about this, please contact Dr James Findlay, AFMA Chief Executive Officer on (02) 6225 5534.

Yours sincerely



Handwritten signature of Anne Ruston in black ink, featuring a large, stylized 'A' and 'R'.

Anne Ruston

2. Response by WA Minister agreeing to change the catch limit for Dolphinfish (Mahi Mahi) by Commonwealth fishers in the Western Tuna and Billfish Fishery.



**The Hon Joe Francis MLA
Minister for Emergency Services; Fisheries;
Corrective Services; Veterans**

Our Ref: 51-10390
Your Ref: MS 16-000731

Senator the Hon Anne Ruston
Assistant Minister for Agriculture and Water Resources
Parliament House
CANBERRA ACT 2600

Dear Assistant Minister

**AMENDMENT OF THE MEMORANDUM OF UNDERSTANDING FOR THE
FISHERY FOR TUNA AND TUNA-LIKE SPECIES**

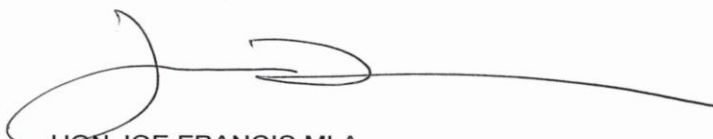
Thank you for your letter of 17 March 2016, which was addressed to the Hon Ken Baston MLC, regarding the trip limit for Mahi Mahi (Dolphinfish *Coryphaena hippurus*) set out in the Memorandum of Understanding (MOU) for the Fishery for Tuna and Tuna-like Species.

I understand the Western Australian Fishing Industry Council is seeking a change from the current limit for Mahi Mahi of 10 fish per trip to a limit of 200 fish per trip for vessels operating in the Commonwealth Western Tuna and Billfish Fishery (WTBF). I note Recfishwest supports the proposal.

I am pleased to see the cross-sectoral support for this change as it will reduce the wastage of fish that was occurring with the 10 fish trip limit and will result in increased availability of this species in the marketplace.

On the basis that this matter has received support, I am pleased to agree with a change to the trip limit for vessels operating in the WTBF set out in the MOU for the Fishery for Tuna and Tuna-like Species from 10 to 200 Mahi Mahi.

Yours sincerely



HON JOE FRANCIS MLA
MINISTER FOR FISHERIES
14 JUN 2016

13th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia 6005
Telephone: +61 8 6552 6500 Facsimile: +61 8 6552 6501 Email: Minister.Francis@dpc.wa.gov.au