

MEMORANDUM OF AGREEMENT
by and between the
DEPARTMENT OF FISH AND GAME
and its
DIVISION OF MARINE FISHERIES
and the
ATLANTIC WHITE SHARK CONSERVANCY
concerning
DONATED SUPPORT FOR DMF'S WHITE SHARK RESEARCH

I. PARTIES

The parties to this updated Memorandum of Agreement (Agreement) are the Massachusetts Department of Fish and Game (DFG) and its Division of Marine Fisheries (DMF), with a principal place of business located at 251 Causeway Street, Suite 400, Boston, MA 02114, and the Atlantic White Shark Conservancy, Inc. (AWSC), a nonprofit, tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code, with a place of business located at 235 Orleans Road, North Chatham, MA 02650 (collectively, the Parties).

II. AUTHORITY

In entering into this Agreement, DFG and DMF are acting pursuant to their authority in M.G.L. c. 21A, §2(3), (22) and (26) and M.G.L. c. 130, §17(3) and (5) and all other enabling powers. The AWSC is entering into this Agreement pursuant to its authority and status as a non-profit organization.

III. PURPOSE AND BACKGROUND

DMF is a division of DFG, which is within the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs. DMF has the authority and responsibility to protect, manage and regulate fishery resources in the marine waters of the Commonwealth. More specifically, DMF regulates commercial and recreational fishing activity in state marine waters and promotes and develops commercial and recreational fisheries through research, technical assistance, and the collection of statistics. DMF's authority and responsibilities are set forth in its enabling statute at M.G.L. c. 130 and regulations thereunder at 322 CMR and under the federal Atlantic Coastal Fisheries Cooperative Management Act, the Interjurisdictional Fisheries Management Act, and the Magnuson-Stevens Fishery Conservation and Management Act. DMF's white shark research efforts are led by Dr. Greg Skomal, a Senior Marine Fisheries Scientist in DMF and an internationally-recognized shark expert.

The AWSC is a private, non-profit organization established in 2012 that supports, both within Massachusetts and beyond, scientific research, public education, conservation efforts, and public safety initiatives related to white sharks (*Carcharodon carcharias*) whose presence in the Commonwealth's near shore coastal waters has grown significantly in recent years. The AWSC also conducts fundraising to support the activities of its organization and also to provide support for DMF's shark research and other organizations that conduct scientific studies or engage in public education related to white sharks.

Beginning in 2013, the AWSC has lent at no cost and/or donated services and equipment in support of DMF's white shark research efforts. In 2014, DMF and researchers at the University of Massachusetts Dartmouth designed a 5-year mark-recapture study to determine the white shark population size in MA waters. This DMF study received financial support from the Commonwealth of Massachusetts, UMass Dartmouth, and private foundations. Because of its mission, the AWSC offered to support DMF's implementation of the 5-year white shark study. To that end, the AWSC donated vessel time, spotter pilot services, the deployment and retrieval of moored acoustic receivers and buoys purchased by the AWSC, and thousands of volunteer hours associated with all these activities to DMF from the commencement of the study in 2014 through its completion of the field component of the study in 2018.

During the implementation of DMF's study, the AWSC did not conduct shark research activities (e.g., such as the tagging of sharks) for itself or for DMF. Consequently, the AWSC was not required to obtain a shark research permit from DMF, nor was the AWSC otherwise regulated by DMF. Instead, as noted above, the AWSC donated services, vessel(s) and other equipment that was used by DMF, and by others, to conduct its shark research. There have also been instances where DMF has, through a state contract, paid the AWSC for certain equipment.

The Parties entered into an initial Memorandum of Agreement on September 28, 2017 for the following purposes:

- To describe the background to and nature of the relationship between the AWSC and DMF;
- To recognize and sustain the AWSC's valuable, donated contributions in support of DMF's white shark research, and in particular, towards DMF's ongoing implementation of its 5-year mark-recapture study; and
- To memorialize, and as needed, to update and clarify the expectations, scope and substance of commitments made by DMF and the AWSC with respect to AWSC's support of DMF's white shark research, as provided for in this Agreement.

In the summer of 2019, DMF began a new white shark research effort that will continue to study the movement ecology, behavior, and natural history of white sharks off the coast of Massachusetts, with special emphasis on public safety. Consistent with its preceding 5-year mark-recapture study, DMF will employ the least-invasive methods to tag white sharks. DMF will not use methods that involve the attraction, baiting, and capture of white sharks to ensure that the behavior of the sharks is not altered and to protect public safety. Instead, free-swimming sharks will be tagged from the pulpit of a vessel using a tethered or clamped PSAT (pop-up satellite archival transmitting) tag, acoustic tag, VMT (Vemco Acoustic Transmitter) tag, and/or ADL (acceleration data loggers). Some of these devices will transmit data to real-time and/or data-logging receivers deployed in the water.

Given the apparent differences in site fidelity and residency patterns of white sharks along the Cape, and an increase in reports from charter captains and recreational fishermen of juvenile white sharks in Cape Cod Bay, DMF also intends to expand its tagging efforts to include Cape Cod Bay.

Finally, DMF intends to deploy gridded arrays of acoustic receivers off one or more areas of intense white shark activity where seal predation events and shark attacks have occurred in recent years. The high-resolution data collected, coupled with habitat mapping, will be used by DMF to better understand fine-scale movements in these areas of high shark-human overlap. DMF will use this information to identify factors correlated with both alongshore and onshore-offshore movements, which will better inform public safety practices.

In 2019, AWSC also hired its own research scientist, who will be collaborating with DMF in the implementation of its 2019 - 2023 white shark research, subject to the supervision of Dr. Skomal. Because, at this time, the AWSC scientist is not independently conducting white shark research that involves field activities in coastal waters, the AWSC is not required to obtain a white shark research permit from DMF in accordance with 322 CMR 6.37(4) and 322 CMR 7.01(4)(c), nor is the AWSC otherwise regulated by DMF. If the AWSC scientist at any point seeks to engage in such independent field work, as determined by DMF, the AWSC will be required to apply for and obtain a special project permit from the Director of DMF in accordance with 322 CMR 7.01(4)(c). The AWSC understands and agrees that its prior and ongoing donated support of DMF's white shark research through this MOA will not influence DMF's evaluation of any such future permit application.

The AWSC will continue to donate services (vessels, spotter pilots, staff, and volunteers) to be used by DMF, and others, to support DMF's implementation of its 2019 - 2023 white shark research. During the five-year study, all equipment (buoys, receivers, computers) will be considered a shared resource for purposes of white shark research, but shall remain the property of AWSC. The AWSC agrees, however, that it will not hold DMF liable for the loss of or damage to AWSC-owned equipment when used in the course of a DMF employee's duties and in compliance with the terms of this MOA.

The AWSC has offered its continued donated support to DMF in the implementation of this new white shark research effort and the Parties have mutually agreed to extend the term of this Agreement for that purpose for an additional 5 years and update other terms of the Agreement as deemed necessary and appropriate by the Parties.

IV. AGREEMENT

(1) The AWSC agrees to:

- Establish its priorities and work plans in accordance with its own understanding of the AWSC's mission, which extends beyond supporting DMF's white shark research. The AWSC may choose to seek advice from DMF on such matters as they relate to DMF's white shark research priorities.
- Donate services and volunteer staff assistance and share equipment, as specified in advance by the AWSC, in support of DMF's implementation of white shark research, subject to the sole discretion of the AWSC. The AWSC agrees that all equipment that it has authorized DMF to use free of charge will be specified by the AWSC in writing in advance of providing each such equipment for use by DMF.

- Obtain the prior approval of the DMF Shark Research Project Leader, Dr. Greg Skomal, before donating supplies or services to the DMF or sharing AWSC-owned equipment with DMF, with such approval (or decision to decline) to be provided by DMF to the AWSC within a commercially reasonable period of time.
- Ensure that all written descriptions or visual images by the AWSC of DMF's white shark research, conducted in collaboration with AWSC, and associated DMF personnel to be posted or otherwise disseminated by the AWSC on its website and/or in printed materials accurately characterizes the relationship and respective roles of the AWSC and DMF, including but not limited to, with respect to:
 - (1) videos created by the AWSC, whether posted on its website or on other social media outlets;
 - (2) the data and results of DMF's ongoing white shark research and the ongoing activities associated with such research;
 - (3) references to the DMF Shark Research Project Leader, Dr. Greg Skomal.
- Provide the DMF Director or his designee with advanced notice by email of any proposed event to be hosted by the AWSC where the participation of Dr. Greg Skomal or other DMF employees is requested, regardless of whether such persons are requested to participate as part of their duties as a DMF employee or on their own time; and obtain the prior written approval by email of the DMF Director or his designee of the participation in such event by Dr. Skomal or other such DMF employee.
- "Tag" DMF on all social media posts involving DMF, including DMF's ongoing white shark research.

Ensure in any oral or written communications with its members, actual or potential donors, the media or the general public that the AWSC accurately characterizes the relationship and respective roles of the AWSC and DMF, including the AWSC's research scientist's collaboration with DMF during its 2019 - 2023 white shark research, as described in this Agreement.

- Be solely responsible for organizing and funding any event for which the AWSC has requested participation by a DMF employee, subject to the requirements below for prior approval and compliance with ethics laws;
- Not request that any DMF employee serve on the Board of Directors of the AWSC.
- When soliciting donations or applying for grants or other funding from outside parties, the AWSC shall use best efforts to ensure that no impression is created that the ASWC is acting as an agent of DMF.
- Obtain the approval of DMF's Director or his designee prior to paying any expenses of or giving any gifts to any DMF employee, regardless of whether such employee is on state time

or on their own time, so DMF may ensure the compliance of its employees with the state conflict of interest law, M.G.L. c. 268A, and regulations at 930 CMR.

- Ensure that no DMF employee is asked to or may be reasonably perceived as directly or indirectly soliciting donations for the AWSC, regardless of whether such donations will be used solely to support DMF's shark research efforts and regardless of whether such employee is on state time or on their own time.
- Add a link to the white shark research page on the AWSC's website that brings the public to the DMF webpage where DMF describes its relationship with the AWSC.

(2) DMF agrees to:

- Acknowledge publicly, in appropriate circumstances, the donated support received from the AWSC that facilitates DMF's implementation of its white shark research, including by updating the page on DMF's website that describes its relationship with the AWSC and adding a link that will allow the public to access a copy of a signed version of this updated Agreement.
- DMF's agreement to publicly acknowledge the AWSC's donated support is subject to the understanding of the Parties that: (1) the extent to which DMF accepts such donated support from the AWSC is at DMF's sole discretion and will be based on considerations that include the future availability of increased state funding for DMF's white shark research activities; and (2) the AWSC does not have any exclusive agreement to support DMF's white shark research and that DMF has and may continue to accept donations for such purposes from other outside parties as deemed appropriate by DMF.
- "Tag" AWSC on all social media posts involving DMF's white shark research conducted with the donated support of the AWSC.
- Be solely responsible for developing the annual work plan for its white shark research, including how DMF assigns staff and other resources to implement the work plan.
- Be solely responsible for the tagging and handling of all sharks and execution of white shark research on sharks, as determined by DMF, unless the AWSC applies for and obtains a special project permit from the Director of DMF in accordance with 322 CMR 7.01(4)(c).
- Ensure that all equipment previously donated by the AWSC are used solely for DMF's white shark research and associated costs, and upon request by the AWSC, provide an accounting of DMF's use of such donated support.
- Be solely responsible for the presentation of DMF's white shark research to the public, unless the DMF Shark Research Project Leader, Dr. Greg Skomal, has given his prior approval to the AWSC to also disseminate such information.
- Ensure in any oral or written communications with the media or the general public that DMF accurately characterizes the relationship and respective roles of DMF and AWSC researchers, as described in this Agreement.

- At the request of the AWSC, arrange for appropriate DMF staff to give presentations, lectures or educational seminars about its white shark research to the AWSC members and their guests, or at other AWSC-sponsored events. DMF will exercise its best efforts to respond within three (3) business days to such AWSC request, provided that DMF's failure to respond by this timeframe shall not be construed as an approval of the request. DMF's commitment to make DMF staff available for such purposes is subject to the following conditions:
 - (1) the request by the AWSC is made reasonably in advance of any such proposed event; (pursuant to Section IV.(1));
 - (2) DMF has determined that it will not interfere with DMF's other work responsibilities and has been approved in advance by DMF's Director;
 - (3) no such participating DMF staff will be perceived as directly or indirectly soliciting donations for the AWSC, as determined by DMF;
 - (4) DMF has sole discretion to disseminate the information contained in such presentations to the media, other outside parties or the public, unless such information is proprietary to the AWSC, in which case the consent of the AWSC shall be required to be provided prior to its dissemination by the DMF.
 - (5) No DMF employee is speaking on behalf of the AWSC; and
 - (6) DMF has no limitation on making similar presentations to other outside parties and the general public as deemed appropriate by DMF.

C. Other Provisions

1. Ownership of DMF White Shark Research Data, Information and Other Records. White shark research information, data and other records generated by DMF arising out the activities described in this Agreement, shall include all still photographs and underwater video, and shall be owned by the Commonwealth of Massachusetts. Upon request by the AWSC, DMF agrees to provide the AWSC with such white shark research information, data and other records generated by DMF, including still photographs and underwater video, unless DMF determines that the information requested by the AWSC requires further internal review before becoming final for distribution to the public. In the case of DMF-generated still photographs and video arising out of the activities described in this Agreement, DMF will embed its watermark ("Massachusetts Division of Marine Fisheries") as well as the DMF approved AWSC watermark ("Research supported by Atlantic White Shark Conservancy") on any such photographs and video that it provides to the AWSC. AWSC shall then use any such dual watermarked photographs and/or video for any distribution to the media, on its website, for social media posts, and/or any further dissemination of such DMF-generated still photographs and video arising out the activities described herein. DMF also agrees to use the dual watermarked photographs and/or video for distribution to the media, on its website and social media posts, and/or for any further dissemination of said photographs and/or video arising out the activities described herein. Beginning August 2019, the required dual watermark shall be embedded at the top of new still photographs and videos.

Upon request by DMF, the AWSC agrees to provide DMF with still photographs or video of white sharks and related DMF activities generated by the AWSC or its agents arising out of this Agreement which DMF determines constitutes white shark research. The AWSC understands and agrees that all such still photographs or video provided by the AWSC in response to a request by DMF shall be subject to the MA Public Records Law and, therefore, be in the public domain.

2. Compliance with Applicable Laws. This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated.

3. No Modification to the Jurisdiction, Authority or Liability of the Parties. Nothing in the Agreement shall be construed as or have the legal effect of diminishing, modifying or otherwise altering the jurisdiction, authority or other rights of the Commonwealth, DFG and DMF, or of enlarging, modifying or otherwise altering the authority, mission or other rights of the AWSC. Nothing in the Agreement shall be construed as or have the legal effect of enlarging, diminishing or modifying any liability of the Parties, or to creating any liability on the part of the Commonwealth, DFG and DMF for the act or omission of the AWSC or a private person or other organization that results in any loss or damage to property and/or personal injury or death occurring as a consequence of the performance of this Agreement.

4. Disclaimers of Endorsement of the AWSC by the Commonwealth. The AWSC shall not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting or implying in any way that the Commonwealth of Massachusetts, DFG or its DMF and their employees (collectively, the Government) endorse the AWSC's business, goods, or services. All materials referring to the Government must be approved by DMF's Director or his designee prior to publication, with such approval not to be unreasonably withheld. Nothing herein is intended to prevent the Government from recognizing the donated support provided by the AWSC to DMF, or from giving its prior authorization of an inclusion of such recognition in materials generated by the AWSC related to this Agreement.

5. The AWSC is not an Agent or Representative of DFG or DMF. The AWSC is not an agent or representative of the Commonwealth of Massachusetts, DFG or its DMF; nor will the AWSC represent itself as such to third parties.

6. Non-Exclusive Agreement. This Agreement in no way restricts either the DFG or its DMF or the AWSC from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

7. No Third-Party Beneficiaries. Nothing in this Agreement is intended to grant any rights or provide any benefits to any third-party.

8. Contacts for the Parties. The respective contacts for the Parties are as follows:

For the AWSC

Cynthia Wigren
Chief Executive Officer
235 Orleans Road, North Chatham, MA, 02650

603 498-3424
cynthia@atlanticwhiteshark.org

Stephen S. Daniel
Chair, Board of Directors
149 Harding Lane, Chatham, MA, 02633
508 945-0373
sdaniel@seyron.com

For DMF

David E. Pierce, PhD, Director
Division of Marine Fisheries
251 Causeway St., Suite 400
Boston, MA 02114
Telephone: 617 626-1530
David.Pierce@state.ma.us

For DFG

Richard Lehan, General Counsel
Department of Fish and Game
251 Causeway St., Suite 400
Boston, MA 02114
Telephone: 617 626-1552
Richard.Lehan@state.ma.us

The name of the above contacts for the Parties may be modified through written notice to the other Party in lieu of executing a formal amendment pursuant to Section 13 of this Agreement.

9. Survival. Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or early termination of this Agreement shall survive and be enforceable after the expiration or early termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of this Agreement and in connection with this Agreement, shall survive expiration or termination of this Agreement.

10. Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

11. Captions and Headings. The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.

12. Waiver. Failure to enforce any provision of this Agreement by either party shall not constitute waiver of that provision. All waivers must be express and evidenced in writing.

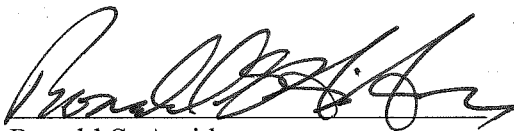
13. Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the Parties.

14. Term of the Agreement. Unless earlier terminated by operation of the terms of this Agreement, or by agreement of the parties in writing, this Agreement will run for a period of five (5) years beginning on the date the last signature is affixed to this Agreement.

15. Termination of the Agreement. DFG and its DMF may jointly terminate this Agreement for any reason by giving thirty (30) days written notice to the AWSC. Conversely, the AWSC may terminate this Agreement for any reason by giving thirty (30) days written notice to DFG and DMF. Termination will be effective at the end of the thirty (30) day period.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives below.

FOR THE DEPARTMENT OF FISH AND GAME

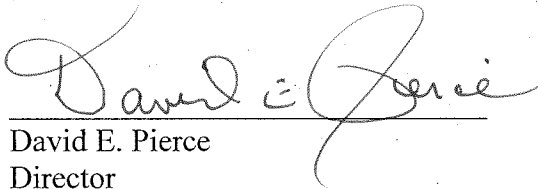


Ronald S. Amidon
Commissioner

9-24-19

Date

FOR THE DIVISION OF MARINE FISHERIES



David E. Pierce
Director

9-25-19

Date

FOR THE ATLANTIC WHITE SHARK CONSERVANCY



Cynthia Wigren
Chief Executive Officer

9/19/19

Date