



THREE SHARKS LISTED AS MIGRATORY SPECIES UNDER THE EPBC ACT

What is the EPBC Act?

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is the Australian Government's central piece of environmental legislation. The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places — defined in the Act as matters of national environmental significance. Listed migratory species are one of the matters of national environmental significance.

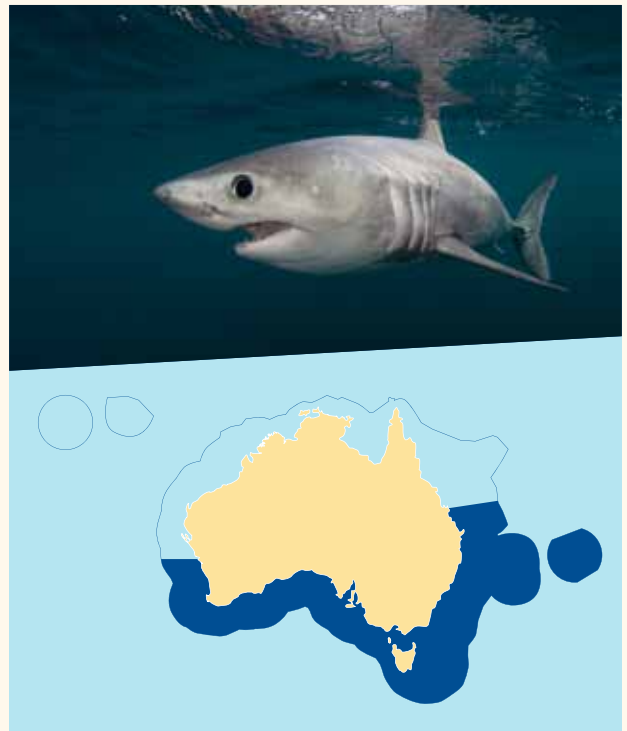
Which sharks will be listed?

On 29 January 2010, three shark species will be included in the list of migratory species under the EPBC Act. These sharks are:

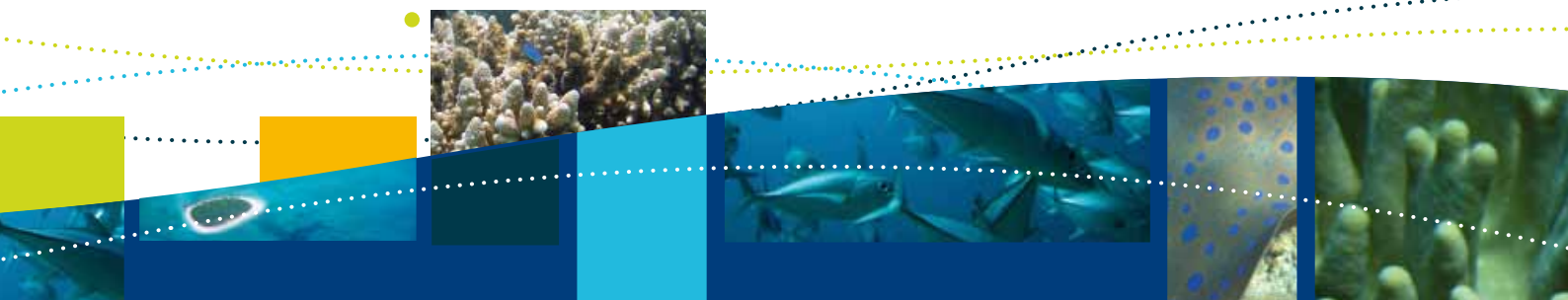
- porbeagle
- shortfin mako
- longfin mako.

Porbeagle

The porbeagle is a wide-ranging, coastal and oceanic shark. Around Australia, porbeagles reach a maximum size of approximately 2 metres. The porbeagle can be confused with the shortfin mako. In Australian waters, the porbeagle is found off southern Australia from southern Queensland to southern Western Australia.

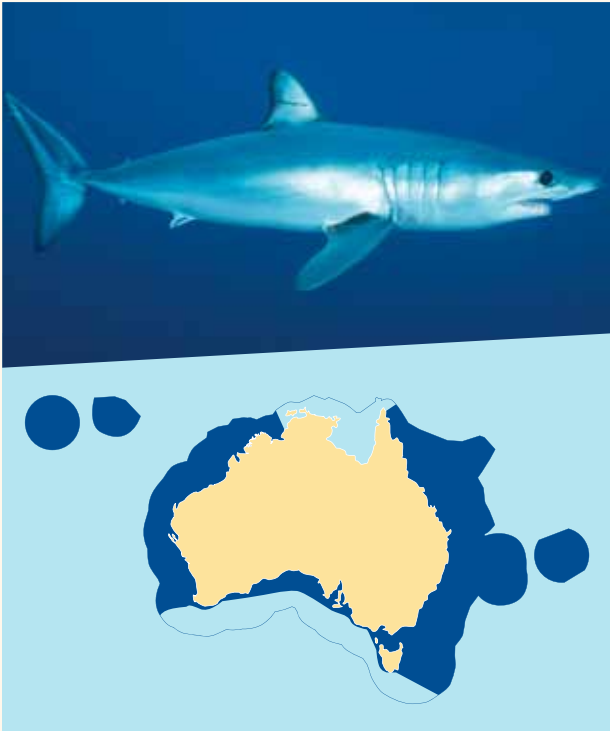


Porbeagle range in Australian waters



Shortfin mako

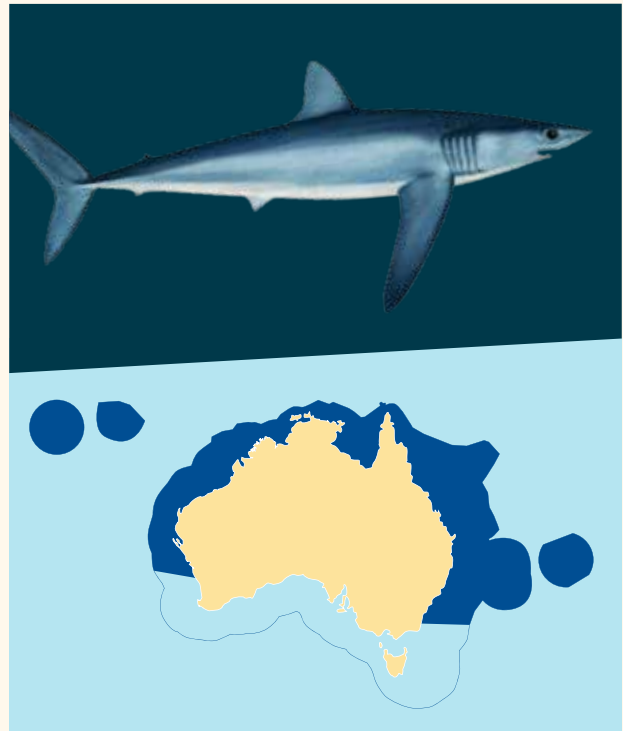
The shortfin mako is a wide-ranging oceanic and pelagic shark. The shortfin mako is probably the fastest of all sharks and can grow to almost 4 metres. The shortfin mako is widespread in Australian waters, but is rarely found in water below 16°C.



Shortfin mako range in Australian waters

Longfin mako

The longfin mako is a widely distributed, but rarely encountered oceanic tropical shark. The longfin mako is often confused with its slightly more slender-bodied relative, the shortfin mako. The longfin mako can grow to just over 4 metres and is found in Australian waters south to Geraldton in Western Australia and to at least Port Stephens in New South Wales.



Longfin mako range in Australian waters

Why have three shark species been listed as migratory?

The EPBC Act requires that species included in an Appendix to the Convention on Migratory Species (CMS) must be added to the list of migratory species under the Act. The three shark species were listed on Appendix II of the CMS in December 2008.

Appendix II of the CMS contains migratory species which have an unfavourable conservation status. Sharks continue to be at risk internationally from over-fishing, illegal trade, habitat degradation, incidental bycatch and emerging threats such as

climate change. The Australian Government is committed to international shark protection and conservation and was supportive of the inclusion of the three sharks in Appendix II of the CMS.

Populations of the porbeagle, shortfin and longfin mako are all considered to have undergone substantial declines globally. Their continued interaction with fisheries, combined with their relatively low reproductive capacity and longevity (the porbeagle is thought to live to 65 years) make them susceptible to over-exploitation and population depletion.

For more information on the CMS, see: <http://www.cms.int/>

What does listing as migratory mean?

From 29 January 2010, when porbeagle, shortfin and longfin mako sharks are included in the list of migratory species, the provisions of the EPBC Act that protect listed migratory species will apply to the three shark species.

There are two principal ways in which the EPBC Act protects listed migratory species:

- Killing, injuring or taking a member of a listed migratory species in a Commonwealth marine area is prohibited, as is trading, keeping or moving a member taken in the Commonwealth marine area. These provisions are found in Part 13 of the Act
- Actions that have, will have, or are likely to have a significant impact on the species as a whole are prohibited. These provisions apply throughout the Australian jurisdiction and are found in Part 3 of the Act.

Killing, injuring, taking, trading, keeping or moving a member of a listed migratory species.

It is a criminal offence to kill, injure or take a member of a listed migratory species in the Commonwealth marine area. It is also an offence to trade, keep or move a member of a listed migratory species that is taken from the Commonwealth marine area.

The Commonwealth marine area:

- includes waters from the outer limit of State and Northern Territory coastal waters to the 200 nm limit of the exclusive economic zone or the edge of the continental shelf (which may extend beyond the 200 nm limit).
- but does not include State and Northern Territory coastal waters and waters within the limits of a State or Territory. (State and Northern Territory coastal waters are the first 3 nautical miles of the territorial sea and waters on the landward side of the territorial sea baselines which are not within State or Northern Territory limits).

There are some exemptions to these provisions. The exemptions include actions that are taken

in accordance with a plan or regime accredited by the Minister, and actions that are the result of an unavoidable accident that is not caused by negligent or reckless behaviour.

Where an exception applies, the person who kills or injures the listed sharks must notify the Secretary of the Department of the Environment, Water, Heritage and the Arts within seven days of the action that resulted in the death or injury. Failure to notify is an offence.

The *Great Barrier Reef Marine Park Act 1975* makes it an offence to take or injure migratory species listed in the EPBC Act throughout the Great Barrier Reef Marine Park.

Actions that have or are likely to have a significant impact on a listed migratory species

Actions that have, will have or are likely to have a significant impact on a listed migratory species are prohibited unless the Minister has granted approval under the Act. These provisions will apply to the three listed shark species. There are substantial civil and criminal penalties for taking such actions.

The provisions apply throughout the Australian jurisdiction including in the Commonwealth marine area and state and territory waters.

The provisions also apply to fishery activities carried out under a plan under the *Fisheries Management Act 1991* which applies to an area not wholly within the Australian jurisdiction.

Whether an action will have or is likely to have a significant impact on a listed migratory species is determined on a case by case basis.

How does the migratory listing affect current activities?

Commercial fishing

A number of Australian fisheries interact with and keep the three shark species concerned.

On 29 January 2010, these sharks will be listed as migratory species under the EPBC Act. From this time, fishing for them will be prohibited in

the Commonwealth marine area. The EPBC Act provides an exception to these prohibitions where species are caught as bycatch in accordance with management arrangements accredited under Part 13 of the Act.

All fisheries in Australian waters that interact with these species currently have Part 13 accreditations. The Department of the Environment, Water, Heritage and the Arts is reviewing existing accreditations under the EPBC Act to ensure that they provide adequate protection for the porbeagle, shortfin and longfin mako shark.

In order to be accredited, fisheries management arrangements must require fishers to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing. The application of this requirement to fisheries management arrangements will be considered on a case-by-case basis. One implication is that live caught sharks will need to be returned.

Take of the three shark species in any Australian waters, including state and Northern Territory coastal waters and waters within State and Northern Territory limits, will also be prohibited if the action was likely to have a significant impact on the species.

Charter boat operators, game fishers and recreational fishers

Following the listing of the three shark species as migratory, the taking or keeping of porbeagle, shortfin or longfin mako sharks in the Commonwealth marine area will not be allowed.

It will not be permitted to target the three species. If the taking, killing or injuring of the shark is the result of an unavoidable accident, not caused by negligence or recklessness, it is not an offence under the EPBC Act. If the shark is alive it must be released without any further harm. It will be permissible to tag an accidentally caught shark prior to release, provided the tagging is done in a way so as to avoid further injury. The Department of the Environment, Water, Heritage and the Arts is developing further guidance on this matter.

If the shark is not alive it must still be released, as retaining the shark is not permitted.

There is a requirement to notify the Secretary of the Department of the Environment, Water, Heritage and the Arts within seven days if a shark (which is a member of a listed migratory species) has been taken, injured or killed. Failure to do so is an offence punishable by a fine of up to \$11,000 (100 penalty units) for individuals. Contact details for reporting are available at <http://www.environment.gov.au/epbc/permits/notifications>.

Take of the three shark species in any Australian waters, including state and Northern Territory coastal waters (i.e. out to 3 nautical miles) and waters within State and Northern Territory limits, will also be prohibited under the Act if the action was likely to have a significant impact on the species.

More information

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Map acknowledgements:

Distribution of Porbeagle from Sharks and Rays of Australia, Last & Stevens 2009
Geoscience Australia (2006): Australian Maritime Boundaries (AMB v2)
Geoscience Australia (1990): Australia, Coastline and State Borders
Map produced by the Environmental Resources Information Network (ERIN).
Australian Government Department of Environment Water Heritage and the Arts, November 2009
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