

ANNEX

ONSHORE MARITIME OPERATIONS **(including Offshore Resource Installations)**

An Annex to the Memorandum of Understanding on the collaborative working relationships between the **Australian Customs and Border Protection Service** and the **Department of Agriculture**

TABLE OF CONTENTS

page

1 STATUS 1

2 OBJECTIVES..... 1

3 KEY PRINCIPLES..... 2

4 OPERATING PRINCIPLES..... 2

5 GOVERNANCE AND REPORTING 3

6 AUTHORISED OFFICERS..... 3

7 NON-COMPLIANCE ACTION 4

8 TRAINING 4

9 ACCESS TO DOCUMENTS AND INFORMATION..... 5

10 COSTS..... 5

11 PROCEDURAL MATERIAL 5

12 NOMINATED CONTACTS 6

13 REVIEW OF ANNEX..... 6

14 COMMENCEMENT 6

15 DEFINITIONS 6

16 MODIFICATION AND TERMINATION 7

17 SIGNATURE 9

1 STATUS

- 1.1 This Annex is made in accordance with clause 10 of the Memorandum of Understanding (**Memorandum**) between the Australian Customs and Border Protection Service (**Customs and Border Protection**) and the Department of Agriculture.
- 1.2 The Parties view this Annex as:
 - (a) not intending to create any legally binding obligations; and
 - (b) an opportunity to ensure that there is a nationally consistent approach to their working relationship on specific matters outlined in this annex.
- 1.3 Some clauses that appear in this Annex may also appear in other Annexes made between the Department of Agriculture and Customs and Border Protection; however these clauses are included to apply specifically to the Onshore Maritime Operations of both agencies.

2 OBJECTIVES

- 2.1 This Annex sets out the governing principles for both agencies in relation to Onshore Maritime Operations that are carried out in the Onshore Maritime Environment.
- 2.2 The Department of Agriculture and Customs and Border Protection will collaborate in the Onshore Maritime Environment to achieve the following objectives:
 - (a) establish efficient and streamlined border management which supports vessel movement into Australia and into Australian Offshore Resource Installations, while protecting the Australian community from a range of border and biosecurity risks;
 - (b) provide complementary operations that eliminate duplication and provide value for money to the Commonwealth; and
 - (c) share processes, facilities, capability, joint training, information and intelligence, including access to agreed systems, data and resources, to:
 - (i) identify and respond to border and biosecurity risks;
 - (ii) improve the effectiveness of risk based targeting;
 - (iii) improve compliance with legislation and regulations administered by the Department of Agriculture and Customs and Border Protection; and
 - (iv) further develop a whole-of-government approach.
 - (d) recognise that each agency has individual responsibilities and functions that contribute to a whole-of-government approach and both Parties are committed to a collaborative and complementary operational approach in the discharge of their respective functions within Australia's maritime environment.
 - (e) promote co-operative arrangements for the development of surveillance and response activities.

3 KEY PRINCIPLES

- 3.1 The Memorandum and this Annex provides the basis for a collaborative working relationship between the two agencies regarding onshore maritime operations surveillance activities relating to border security, biosecurity compliance risks within Australia's maritime environment.
- 3.2 The Department of Agriculture and Customs and Border Protection will
- (a) focus on minimising disruption to legitimate trade while managing border and biosecurity risks, including the risk of the spread of pests and diseases, marine pests and through ballast water;
 - (b) seek opportunities to actively promote collaboration to achieve joint business outcomes and efficiencies;
 - (c) support efforts to manage risk through the participation in policy development, national and international meetings, capacity building and joint initiatives;
 - (d) maximise opportunities to achieve cost and resource efficiencies by considering joint procurements and/or usage of resources, including technology skills, training facilities and infrastructure (in line with relevant annexes);
 - (e) develop and implement joint strategies for both internal and external communications relating to regular Onshore Vessel and Offshore Resource Installation processes;
 - (f) recognise the obligations of each agency in administering their respective legislation, risk and responsibilities;
 - (g) act cooperatively and collaboratively to enhance the effectiveness of each agency's performance; and
 - (h) commit to regular review of areas where resource reductions, new priority settings, legislative change and resource contention is leading to concerns for either agency.
- 3.3 Department of Agriculture engages with Customs and Border Protection in its biosecurity function and contributes to the Border Protection Command's border security activities. Both agencies will engage, as necessary, with other Commonwealth agencies to address concerns relating to border security and biosecurity risks and provide advice on appropriate actions accordingly.

4 OPERATING PRINCIPLES

- 4.1 This Annex is supported in the maritime environment by existing operational arrangements as agreed by both agencies. These arrangements complement and support the objectives of this Annex.
- 4.2 The Department of Agriculture and Customs and Border Protection will deliver effective and efficient border security and biosecurity management in the Onshore Maritime Environment by:
- (a) seeking to jointly improve the compliance rate of arriving Onshore Vessels including through collaborative communication programs consistent with the Joint Communications Annex;
 - (b) identifying, reporting and collaboratively responding to non-compliant activity;

- (c) identifying new opportunities to jointly achieve business outcomes and efficiencies;
 - (d) facilitating a collaborative approach to managing resources and negotiating with external parties when procuring or developing resources;
 - (e) focusing effort on:
 - (i) deploying targeted and risk-based operating approaches;
 - (ii) risk-led boarding and intervention, including joint waterfront patrols or surveillance wherever possible and appropriate;
 - (iii) joint screening and clearing of the personal effects of international crew and passengers;
 - (iv) detecting, reporting and acting on non-compliant behaviour of arriving Onshore Vessels and their crew and passengers; and
 - (v) providing timely advice wherever appropriate and operationally possible of proposed intervention activities, including detector dog deployments.
 - (f) supporting each other's operations to the extent that it is practically and operationally possible.
 - (g) Department of Agriculture and Customs and Border Protection will consult at the earliest opportunity regarding proposed changes to office locations or current business practices which may impact on the other Agency's resources or capacity.
- 4.3 Where Customs and Border Protection has an officer available to perform revenue collection functions, Customs and Border Protection will collect revenue from Onshore Vessels or travellers in respect of matters relating to the Department of Agriculture's functions, including infringement notices, biosecurity treatments, storage and general processing fees, in accordance with the Cost Recovery Annex. In circumstances where there is no Customs and Border Protection officer available, the Department of Agriculture will make alternate revenue collection arrangements.
- 4.4 Both Agencies commit to a regular review of areas where resourcing, new priority settings, or legislative change is leading to concerns for either Agency.

5 GOVERNANCE AND REPORTING

- 5.1 The Department of Agriculture and Customs and Border Protection will meet regularly to discuss, develop and evaluate opportunities for collaboration and to monitor strategic direction and priorities.
- 5.2 The Customs and Border Protection – Department of Agriculture Strategic Working Group (SWG) will be regularly updated on performance against principles and guidelines agreed in this Annex.

6 AUTHORISED OFFICERS

- 6.1 The Department of Agriculture and Customs and Border Protection acknowledge that specific

authorisations or delegations are required for the performance of certain functions.

- 6.2 Authorised Officers of Customs and Border Protection may from time to time, and as authorised by the Department of Agriculture, perform functions on behalf of the Department of Agriculture, under conditions agreed in writing by both Parties.
- 6.3 Authorised Officers of the Department of Agriculture may from time to time, as authorised by the Chief Executive Officer of Customs and Border Protection, perform functions on behalf of Customs and Border Protection, under conditions agreed in writing by both Parties.
- 6.4 The Department of Agriculture and Customs and Border Protection will ensure that any required authorisations or delegations are in place prior to the performance of any related duties.

7 NON-COMPLIANCE ACTION

- 7.1 The Department of Agriculture and Customs and Border Protection acknowledge that particular events or actions in the Onshore Maritime Environment may be in breach of both the Department of Agriculture and Customs and Border Protection legislation. Where this occurs, the Parties may collaboratively assess the facts to determine whether a joint response is appropriate.
- 7.2 For summary matters, where joint prosecution action is proposed and agreed, the matter will be progressed by Customs and Border Protection wherever resources allow.
 - (a) Customs and Border Protection may facilitate a record of interview when requested by the Department of Agriculture to help determine and establish an offence, unless both agencies agree that particular circumstances exist that prevent this function from being achieved.
 - (b) For offences under Quarantine legislation, the Department of Agriculture will make the final decision whether to commence legal action and will provide Customs and Border Protection with written authorisation to proceed with an action. The Department of Agriculture will bear the costs incurred including legal costs as invoiced or advised by the Australian Government Solicitor (AGS).
- 7.3 Customs and Border Protection and the Department of Agriculture will jointly consider the implications on these arrangements of any legislative change to ensure that operational and administrative processes remain manageable for both agencies. It is acknowledged that revision may be required.

8 TRAINING

- 8.1 The Parties will provide officers of the other agency with the necessary training to:
 - (a) promote an understanding of their respective functions in the Onshore Maritime Environment, and of the controls used in the management of risks; and
 - (b) facilitate the referral of issues or items of interest to the other agency.
- 8.2 The Parties will provide specific training for those functions that are or may be performed on

their behalf by the other agency, as identified and agreed by both agencies.

- 8.3 Each will collaboratively develop content, format, learning outcomes and assessment criteria to facilitate the delivery of cross or joint agency training as identified in clauses 8.1 or 8.2.
- 8.4 Each agency agrees not to assign any of their officers or employees to a position where the other agency's functions and duties are performed until agreed training has been completed and/or guidelines have been provided. This may include the completion of refresher training.

9 ACCESS TO DOCUMENTS AND INFORMATION

- 9.1 Each will make available to the other documentation and information held by either agency which is essential for the proper management of the border security and biosecurity functions. This includes material which may indicate possible breaches of relevant legislation.
- 9.2 All information exchanged between the agencies will be in accordance with Commonwealth legislation and other requirements including the *Privacy Act 1988* and section 16 of the *Customs Administration Act 1985* which will only be used for the purpose it was given or a related purpose.
- 9.3 Each agency, when disclosing information to the other, will ensure that the security classification, including any caveat or handling instruction, is clearly identified when doing so.
- 9.4 Each agency will ensure that their officers hold the required level of security clearance appropriate to access or receive the other's information. The agencies will consult with each other and agree on the level of security clearance required for accessing or receiving information as well as for officers to attend briefings, operations planning and gain access to facilities as required, for border and biosecurity activities.

10 COSTS

- 10.1 The Parties agree that each will bear their own costs in fulfilling their commitments under this Annex, except where written agreement has been or is reached by the agencies as to their sharing or apportionment.
- 10.2 In accordance with clause 7.2 (b), the Department of Agriculture will pay costs as advised by the Australian Government Solicitor, relating to the Department of Agriculture prosecutions.
- 10.3 The Parties agree that all training costs, other than participants' travel costs, will be met by the agency delivering the training. Where joint training is delivered, costs other than participants' travel costs, will be apportioned equally.

11 PROCEDURAL MATERIAL

- 11.1 The Parties may either jointly or independently develop Procedural Material or Schedules that are consistent with this Annex in accordance with clause 10 of the Memorandum.
- 11.2 Where the creation or modification of any Procedural Material by one agency may affect the other agency, Customs and Border Protection and the Department of Agriculture will consult with each other and discuss any concerns to allow for the efficient operation of both.

12 NOMINATED CONTACTS

12.1 Each agency may raise matters relevant to the Onshore Maritime Operations with the following nominated contacts:

- (a) Customs and Border Protection –
National Manager, Enforcement Operations.
Customs and Border Protection Switchboard Ph: +61 2 6275 6666
- (b) Department of Agriculture –
Assistant Secretary, Cargo and Shipping Branch
Department of Agriculture Switchboard Ph: +61 2 6272 3933

13 REVIEW OF ANNEX

13.1 The Parties will review the operation of this Annex three (3) years after commencement or at such other time as mutually determined by the Parties to assess the ongoing suitability of arrangements under this Annex.

14 COMMENCEMENT

14.1 This Annex commences, unless otherwise specified, on:

- (a) the date it is signed by both Parties; or
- (b) the date the last Party signs.

15 DEFINITIONS

15.1 Unless the contrary intention appears, a term used in this Annex has the meaning shown in the table below:

Annex	means this Annex made in accordance with the Memorandum;
Authorised Officers of Customs and Border Protection	means a person employed by Customs and Border Protection or a person authorised in writing by the Chief Executive Officer of Customs and Border Protection to perform all or some of the functions of an Officer of Customs and Border Protection;
Authorised Officers of the Department of Agriculture	means a person under the employment of the Department of Agriculture appointed under the <i>Quarantine Act 1908</i> (the Act) who has legal authority to exercise all powers conferred upon them by the Act.
Commonwealth	means the Commonwealth of Australia;
Cost Recovery Annex	means the Cost Recovery Arrangements and Revenue Collection

	Annex between the Department of Agriculture, Fisheries and Forestry and Customs and Border Protection made pursuant to the Memorandum and signed by the last Party on 9 September 2012
Customs and Border Protection	means the Australian Customs and Border Protection Service;
Memorandum	means the Memorandum of Understanding on the collaborative working relationship between the Australian Customs and Border Protection Service and the Department of Agriculture, Fisheries and Forestry signed on 21 July 2011;
Offshore Resource Installation	means a resource installation that is or becomes attached to the Australian seabed; or a sea installation that is or becomes installed in an adjacent or coastal area;
Onshore Maritime Environment	refers to the surroundings and geographical area within which Onshore Maritime Operations are carried out;
Onshore Maritime Operations	refers to Customs and Border Protection and the Department of Agriculture operational processes in approved ports of arrival on the Australian mainland and in external territories, and on Offshore Resource Installations. It does not include maritime operations conducted at sea - e.g. foreign fisher or irregular maritime activities or surveillance performed offshore – but does include the processing of persons detected offshore after arrival into port;
Onshore Vessel	means any vessel used in navigation, including: <ul style="list-style-type: none"> – ships, boats, barges or other floating vessels which arrive from overseas into Australian ports, including Offshore Resource Installations. <p>It does not include cruise ships;</p>
Procedural Material	includes Standard Operating Procedures, Instructions and Guidelines or Business Practice Statements or any procedural material made in accordance with this Annex.

16 MODIFICATION AND TERMINATION

- 16.5 This Annex can be modified or terminated by a written agreement signed by the Chief Executive Officer of Customs and Border Protection and the Secretary of the Department of Agriculture or their delegates.
- 16.6 Unless otherwise specified, a modification or termination:
- (a) takes effect from the date the last Party signs the modification or termination; and

(b) has no effect unless endorsed in accordance with this clause.

17 SIGNATURE

SIGNED at Canberra)
for and on behalf of the)
Australian Customs and Border)
Protection Service by)

[signed]

signature

Ms Karen Harfield
National Director, Compliance &
Enforcement Division
on

6/12/2013

date

SIGNED at Canberra)
for and on behalf of the)
Department of Agriculture)
by)

[signed]

signature

Mr Colin Hunter,
A/g First Assistant Secretary , Border
Compliance Division
on

8/1/2014

date

VERSION CONTROL

Version:	Date:	Author:	Comments:	Cleared by:	Date:	Comments:
0.1	6 June 2012	Leanne Collins	Initial Draft			
0.2	29 October	Leanne Collins	Updated draft; name change			
0.3	6 December	Leanne Collins	Updated draft			
0.4	1 Feb 2013	Tania Baker	Updated Draft			
0.5	24 June 2013	Dan Passer	Updated Draft			

NOTE:

- A new version of the document must be created each time any major changes are made.
- Versions “0” are draft versions.
- Versions “1” are versions forwarded to the CEO for approval.
- Versions “2” are versions for publishing.

Corporate Colours (in RGB and HEX colour schemes):

Colour Scheme: RGB	Red	Green	Blue	HEX colour scheme
RED	158	27	50	002B46
BLUE	0	43	70	9E1B32
GREY	153	139	125	998B7D