



Queensland

Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013

Subordinate Legislation 2013 No. 61

made under the

Marine Parks Act 2004

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

Statutory Instruments Act 1992

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013*.

Part 2 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

2 Regulation amended

This part amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

3 Amendment of s 5 (Interpretation generally)

Section 5(1), ‘schedule 4’—

omit, insert—

schedule 5

4 Amendment of s 9 (Purpose of pt 1)

Section 9, notes, note 1—

omit, insert—

- 1 The Administration Regulation, section 30, contains other restrictions on grant applying to all wildlife authorities.

5 Insertion of new s 11A

After section 11—

insert—

11A General restriction on grant of wildlife authorities in dugong protection areas

(1) The chief executive may grant a wildlife authority authorising a person to take, keep or use protected wildlife in a dugong protection area only if the chief executive is satisfied the taking, keeping or using of the protected wildlife is not likely to significantly reduce the local dugong population or significantly harm dugong habitat.

(2) In this section—

dugong protection area means regulated waters, described in the *Fisheries Regulation 2008*, schedule 1, that have a name that includes either of the following terms—

- (a) greater dugong protection area;
- (b) dugong protection area.

6 Insertion of new s 43A

After section 43—

insert—

43A Keeping and use of dead marine mammals

(1) The chief executive may give a dead marine mammal to—

- (a) a traditional owner for the land or waters from which the mammal was taken or on or in which the mammal was found; or
- (b) a person nominated by a person mentioned in paragraph (a).

(2) If a person is given a dead marine mammal under subsection (1), the person may keep or use the mammal if the keeping or use is for the personal, domestic or non-commercial communal needs of

a community or group of Aboriginal people or Torres Strait Islanders.

(3) In this section—

representative Aboriginal/Torres Strait Islander body has the meaning given by the *Native Title Act 1993* (Cwlth).

traditional owner, for land or waters, means a person of Aboriginal or Torres Strait Islander descent who—

- (a) is recognised in the Aboriginal or Torres Strait Islander community generally, or by a representative Aboriginal/Torres Strait Islander body for an area that includes the land or waters—
 - (i) as having spiritual or cultural affiliations with the land or waters; or
 - (ii) as holding native title in relation to the land or waters; and
- (b) is entitled to undertake activities under Aboriginal tradition or Island custom on the land or in the waters.

7 Amendment of s 58 (Sick or injured protected marine mammals and turtles)

Section 58(2), note—

omit.

8 Insertion of new s 60A

After section 60—

insert—

60A Interacting with dolphins as part of Tin Can Bay dolphin feeding program

- (1) A person may, without a commercial wildlife licence (wildlife interaction), engage in an unauthorised interaction for a dolphin if the interaction—
 - (a) is part of the Tin Can Bay dolphin feeding program; and
 - (b) is authorised under the conditions of operation imposed by the chief executive on the approval for the program.
- (2) If the operator of the Tin Can Bay dolphin feeding program knows, or ought reasonably to know, a dolphin the subject of the program is sick or injured or has died, the operator must—
 - (a) immediately notify a conservation officer of the matter; and
 - (b) if the officer directs the operator to deal with the dolphin in a particular way—deal with the dolphin in the way directed.

Maximum penalty—100 penalty units.

- (3) A conservation officer may give a direction under subsection (2)(b) only if the direction is reasonable in the circumstances.
- (4) The operator of the Tin Can Bay dolphin feeding program must give the chief executive a written report, in the approved form, about the activities carried out as part of the program—
 - (a) for each month; and
 - (b) within 10 business days after the month ends.

Maximum penalty—120 penalty units.

- (5) In this section—

Tin Can Bay dolphin feeding program means the program for feeding dolphins in the waters adjacent to lot 80 shown on plan MCH5383 approved by the chief executive (subject to stated conditions of operation).

Note—

A copy of plan MCH5383 is available on the department's website.

9 Amendment of ss 70, 77, 92, 97, 110, 119, 126, 136, 152 and 166, hdgs

Sections 70, 77, 92, 97, 110, 119, 126, 136, 152 and 166, headings, 'division'—

omit, insert—

div

10 Amendment of s 208 (Restriction about persons to whom permit may be granted)

Section 208, note—

omit.

11 Amendment of s 220 (Restriction on grant of permit for particular mammals)

Section 220(2), definition *minimum distance*—

omit, insert—

minimum distance, for a whale or dolphin, means the minimum distance permitted under chapter 7, part 5A for the whale or dolphin.

12 Amendment of s 262 (Relationship with conservation plan)

Section 262(2), notes—

omit, insert—

Note—

For other provisions about licences for taking, using or moving protected plants, see the Protected Plants Conservation Plan.

13 Amendment of s 302 (Keeping records)

Section 302(a)(i), ‘and’—

omit.

14 Amendment of s 310 (General restrictions about movements for which permit may be granted)

Section 310—

insert—

- (3) Further, the chief executive can not grant a wildlife movement permit for the movement into the State of a live marine mammal taken from the wild other than under a rehabilitation permit or scientific purposes permit.

15 Replacement of s 322 (Procedure for accidental taking of marine mammal or turtle)

Section 322—

omit, insert—

322 Procedure for accidental taking of marine mammal

- (1) This section applies if—
 - (a) a person takes a marine mammal in the course of a lawful activity that was not directed towards taking the mammal; and
 - (b) the taking could not have been reasonably avoided.
- (2) The person must—

- (a) immediately notify a conservation officer about the marine mammal and the circumstances in which the mammal was taken; and
- (b) if the officer directs the person to deal with the marine mammal in a particular way—deal with the mammal in the way directed.

Maximum penalty—165 penalty units.

- (3) A conservation officer may give a direction under subsection (2)(b) only if the direction is reasonable in the circumstances.
- (4) In this section—
take, a marine mammal, includes—
 - (a) cause the mammal to—
 - (i) go ashore; or
 - (ii) become trapped or entangled; or
 - (b) strike the mammal with a boat.

322A Procedure for accidental taking of marine turtle

- (1) This section applies if—
 - (a) a person takes a marine turtle in the course of a lawful activity that was not directed towards taking the turtle; and
 - (b) the taking could not have been reasonably avoided.
- (2) The person must—
 - (a) if the marine turtle is sick, injured, trapped, entangled or dead, or has been struck by a boat—

- (i) immediately notify a conservation officer about the turtle and the circumstances in which the turtle was taken; and
 - (ii) if the officer directs the person to deal with the turtle in a particular way—deal with the turtle in the way directed; or
- (b) otherwise—return the turtle to the waters from which it was taken.

Maximum penalty—120 penalty units.

- (3) A conservation officer may give a direction under subsection (2)(a)(ii) only if the direction is reasonable in the circumstances.
- (4) In this section—
take, a marine turtle, includes—
 - (a) cause the turtle to become trapped or entangled; or
 - (b) strike the turtle with a boat.

16 Insertion of new ch 7, pt 5A

Chapter 7—

insert—

Part 5A Marine mammals

Division 1 Preliminary

338A Application of pt 5A

- (1) This part applies to marine mammals in the wild.
- (2) However, a provision of this part that applies in relation to a no approach zone, caution zone or

prescribed distance for a marine mammal applies to a dugong only if a special management declaration provides for the no approach zone, caution zone or prescribed distance for the dugong.

- (3) This part does not apply to—
 - (a) a person acting under a scientific purposes permit; or
 - (b) a person complying with—
 - (i) a direction given by a conservation officer under section 373(2)(a) or (3); or
 - (ii) a request made by a conservation officer under section 373(2)(b).

Division 2 Restrictions and requirements for boats

Subdivision 1 General restrictions

338B Speed limit

- (1) This section applies if a special management declaration states that a person in control of a boat must not bring the boat within a stated distance of a marine mammal at a stated speed.
- (2) A person in control of a boat must not, without a reasonable excuse, bring the boat within the stated distance of the marine mammal at the stated speed.

Maximum penalty—165 penalty units.

338C Restricting path or causing change in direction of travel of a marine mammal

A person in control of a boat must not, without a reasonable excuse, restrict the path of a marine mammal or cause a marine mammal to change its direction of travel.

Maximum penalty—120 penalty units.

338D Dividing a group of marine mammals

A person in control of a boat must not, without a reasonable excuse, bring the boat between members of a pod of whales or dolphins or a herd of dugongs.

Maximum penalty—120 penalty units.

Subdivision 2 Distance restrictions

338E Entering no approach zone for a marine mammal

A person in control of a boat must not, without a reasonable excuse, bring the boat within the no approach zone for a marine mammal.

Maximum penalty—

- (a) if the no approach zone is provided for by a special management declaration—165 penalty units; or
- (b) otherwise—120 penalty units.

338F Entering caution zone for a marine mammal

- (1) A person in control of a boat must not, without a reasonable excuse, bring the boat within the caution zone for a marine mammal if—

- (a) 3 or more boats are already within the caution zone; or
- (b) the boat is moving—
 - (i) at a speed of more than 6 knots; or
 - (ii) at a speed that creates a wake.

Maximum penalty—

- (a) if the caution zone is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (2) For subsection (1)(a), a boat within the no approach zone for the marine mammal is taken to be within the caution zone for the mammal.

338G Requirement if a whale or dugong comes within no approach zone

- (1) This section applies if—
 - (a) a whale or dugong moves towards a boat; and
 - (b) as a result the boat is within the no approach zone for the whale or dugong.
- (2) The person in control of the boat must, unless the person has a reasonable excuse—
 - (a) stop the boat and—
 - (i) turn the engines off; or
 - (ii) disengage the gears; or
 - (b) withdraw to an area outside the no approach zone for the whale or dugong at a speed that—
 - (i) is not more than 6 knots; and
 - (ii) does not create a wake.

Maximum penalty—

- (a) if the no approach zone is provided for by a special management declaration—165 penalty units; or
- (b) otherwise—120 penalty units.

338H Requirement if a whale or dugong comes within caution zone

- (1) This section applies if—
 - (a) a whale or dugong moves towards a boat; and
 - (b) as a result the boat is within the caution zone for the whale or dugong.
- (2) The person in control of the boat must not, without a reasonable excuse, operate the boat—
 - (a) at a speed of more than 6 knots; or
 - (b) at a speed that creates a wake.

Maximum penalty—

- (a) if the caution zone is provided for by a special management declaration—165 penalty units; or
- (b) otherwise—120 penalty units.

338I Requirement if a dolphin comes within no approach zone or caution zone

- (1) This section applies if a dolphin moves towards a boat and as a result the boat is—
 - (a) within the no approach zone for the dolphin; or
 - (b) within the caution zone for the dolphin.

(2) The person in control of the boat must not, without a reasonable excuse—

(a) change the direction of travel of the boat in a way that would disturb the dolphin; or

Example of a way of changing direction that is not likely to disturb the dolphin—

gradually changing the direction of travel of the boat to avoid making contact with the dolphin

(b) change the speed of travel of the boat in a way that would disturb the dolphin.

Maximum penalty—

(a) in the circumstances mentioned in subsection (1)(a), if the no approach zone is provided for by a special management declaration—165 penalty units; or

(b) in the circumstances mentioned in subsection (1)(b), if the caution zone is provided for by a special management declaration—165 penalty units; or

(c) otherwise—120 penalty units.

338J Requirement if a marine mammal in no approach zone or caution zone shows signs of being disturbed

(1) This section applies to a person in control of a boat within the no approach zone or caution zone for a marine mammal if the mammal shows signs of being disturbed.

Examples of what may be a sign of a marine mammal being disturbed—

a mammal—

- leaving an area or moving away from a boat quickly
- regularly changing its direction or speed of swimming

- changing its breathing patterns
 - acting in an aggressive manner such as tail slashing or trumpet blowing
 - diving in haste
- (2) The person must, unless the person has a reasonable excuse, withdraw the boat to outside the caution zone for the marine mammal at a speed that—
- (a) is not more than 6 knots; and
 - (b) does not create a wake.
- Maximum penalty—
- (a) if the no approach zone or caution zone is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—80 penalty units.

338K Exception for approved filming of marine mammals

- (1) Sections 338E, 338F(1), 338G(2), 338H(2) and 338I(2) do not apply to a person in control of a boat that is at a closer distance to a marine mammal than the no approach zone or caution zone for the mammal if—
- (a) the person, or another person on the boat, is filming the mammal; and
 - (b) the person has written approval of the chief executive to bring the boat at the closer distance for the filming.
- (2) The chief executive may impose conditions on an approval given under subsection (1), including, for example, conditions about what the person in control of the boat must do if the marine mammal moves towards the boat so that the boat is at a

closer distance to the mammal than permitted under the approval.

- (3) A person in control of a boat acting under an approval given under subsection (1) must comply with the conditions of the approval.

Maximum penalty for subsection (3)—

- (a) if the boat is at a closer distance to a marine mammal than permitted by a no approach zone provided for by a special management declaration—165 penalty units; or
- (b) if paragraph (a) does not apply and the boat is at a closer distance to a marine mammal than permitted by a caution zone provided for by a special management declaration—165 penalty units; or
- (c) otherwise—120 penalty units.

Division 3 Restrictions and requirements for prohibited vessels and aircraft

338L Minimum distance for a prohibited vessel

- (1) A person in control of a prohibited vessel must not, without a reasonable excuse—
- (a) bring the vessel any closer than the prescribed distance to a marine mammal; or
 - (b) bring the vessel to a position that would cause a marine mammal to come closer than the prescribed distance to the vessel if the mammal continued on its direction of travel.

Maximum penalty—

- (a) if the prescribed distance is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (2) In this section—
- prescribed distance*** means—
- (a) for a special management marine mammal, if the special management declaration for the mammal states the prescribed distance for a prohibited vessel—the stated distance; or
 - (b) for a marine mammal in a special management area, if the special management declaration for the area states the prescribed distance for a prohibited vessel for the mammal—the stated distance; or
 - (c) for a whale or dolphin other than a whale or dolphin to which paragraph (a) or (b) applies—300m.

338M Minimum distance for a helicopter

- (1) A person in control of a helicopter must not, without a reasonable excuse—
 - (a) bring the helicopter closer than the prescribed distance to a marine mammal; or
 - (b) bring the helicopter to a position that would cause a marine mammal to come closer than the prescribed distance to the helicopter if the mammal continued on its direction of travel.

Maximum penalty—

- (a) if the prescribed distance is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (2) In this section—
- prescribed distance*** means—
- (a) for a special management marine mammal, if the special management declaration for the mammal states the prescribed distance for a helicopter—the stated distance; or
 - (b) for a marine mammal in a special management area, if the special management declaration for the area states the prescribed distance for a helicopter for the mammal—the stated distance; or
 - (c) for a whale or dolphin other than a whale or dolphin to which paragraph (a) or (b) applies—500m.

338N Hovering helicopter

A person in control of a helicopter must not, without a reasonable excuse, hover above a marine mammal.

Maximum penalty—120 penalty units.

338O Minimum distance for an aircraft

- (1) A person in control of an aircraft must not, without a reasonable excuse—
 - (a) operate or land the aircraft closer than the prescribed distance to a marine mammal; or
 - (b) bring the aircraft to a position that would cause a marine mammal to come closer than the prescribed distance to the aircraft if the mammal continued on its direction of travel.

Maximum penalty—

- (a) if the prescribed distance is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (2) In this section—

aircraft does not include a helicopter.

prescribed distance means—

- (a) for a special management marine mammal, if the special management declaration for the mammal states the prescribed distance for an aircraft—the stated distance; or
- (b) for a marine mammal in a special management area, if the special management declaration for the area states the prescribed distance for an aircraft for the mammal—the stated distance; or
- (c) for a whale or dolphin other than a whale or dolphin to which paragraph (a) or (b) applies—300m.

338P Exception for approved filming of marine mammals

- (1) Sections 338L(1), 338M(1) and 338O(1) do not apply to a person in control of a prohibited vessel or aircraft that is at a closer distance to a marine mammal than the prescribed distance for the mammal if—
 - (a) the person, or another person on the vessel or aircraft, is filming the mammal; and
 - (b) the person has written approval of the chief executive to bring the vessel or aircraft at the closer distance for the filming.

- (2) The chief executive may impose conditions on an approval given under subsection (1), including, for example, conditions about what the person in control of the prohibited vessel or aircraft must do if the marine mammal moves towards the vessel or aircraft so that the vessel or aircraft is at a closer distance to the mammal than permitted under the approval.
- (3) A person in control of a prohibited vessel or aircraft acting under an approval given under subsection (1) must comply with the conditions of the approval.

Maximum penalty for subsection (3)—

- (a) if the prohibited vessel or aircraft is at a closer distance to a marine mammal than permitted by a prescribed distance provided for by a special management declaration—165 penalty units; or
- (b) otherwise—120 penalty units.

Division 4 Other restrictions

338Q Minimum distance for people in water

- (1) A person must not enter water any closer than the prescribed distance to a marine mammal.

Maximum penalty—

- (a) if the prescribed distance is provided for by a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (2) A person in water must not move any closer than the prescribed distance to a marine mammal.

Maximum penalty—

- (a) if the prescribed distance is provided for by

- a special management declaration—165 penalty units; or
 - (b) otherwise—120 penalty units.
- (3) Subsections (1) and (2) do not apply to a person—
- (a) feeding a dolphin—
 - (i) under section 60A; or
 - (ii) under a permission granted under the *Marine Parks Act 2004*; or
- Note—*
- See the *Marine Parks Regulation 2006*, section 19 for the restriction on the grant of permissions authorising the feeding of dolphins in a marine park or part of a marine park.
- (b) acting under a commercial wildlife licence (wildlife interaction); or
 - (c) if the person has a reasonable excuse.
- (4) Also, subsections (1) and (2) do not apply to a person entering or in water at a closer distance to a marine mammal than the prescribed distance for the mammal if—
- (a) the person is entering or in the water for the purpose of filming the mammal; and
 - (b) the person has written approval of the chief executive to enter or be in the water at the closer distance for the filming.
- (5) The chief executive may impose conditions on an approval given under subsection (4), including, for example, conditions about what the person entering or in water must do if the marine mammal moves towards the person so that the person is at a closer distance to the mammal than permitted under the approval.

- (6) A person acting under an approval given under subsection (4) must comply with the conditions of the approval.

Maximum penalty—

- (a) if the person is at a closer distance to a marine mammal than permitted by a prescribed distance provided for by a special management declaration—165 penalty units; or
- (b) otherwise—120 penalty units.

- (7) In this section—

prescribed distance means—

- (a) for a special management marine mammal, if the special management declaration for the mammal states the prescribed distance for a person in water—the stated distance; or
- (b) for a marine mammal in a special management area, if the special management declaration for the area states the prescribed distance for a person in water for the mammal—the stated distance; or
- (c) for a whale other than a whale to which paragraph (a) or (b) applies—100m; or
- (d) for a dolphin other than a dolphin to which paragraph (a) or (b) applies—50m.

338R Conducting prohibited activity in a special management area

- (1) A person in a special management area must not, without a reasonable excuse, carry out a prohibited activity for the area.

Maximum penalty—165 penalty units.

- (2) In this section—

prohibited activity, for a special management area, means an activity that the special management declaration for the area states is a prohibited activity for the area.

338S Other restrictions relating to marine mammals

(1) A person must not, without a reasonable excuse, do any of the following—

- (a) deposit rubbish near a marine mammal;
- (b) make a loud or sudden noise within 300m of a marine mammal that may disturb the mammal;

Example of a loud or sudden noise that may disturb a marine mammal—

recordings of whale or dolphin sounds or songs played under water

- (c) touch a marine mammal;
- (d) feed a marine mammal.

Maximum penalty—80 penalty units.

(2) Subsection (1)(d) does not apply to a person feeding a dolphin—

- (a) under section 60A; or
- (b) under a permission granted under the *Marine Parks Act 2004*.

Note—

See the *Marine Parks Regulation 2006*, section 19 for the restriction on the grant of permissions authorising the feeding of dolphins in a marine park or part of a marine park.

17 Insertion of new ch 8, pts 5 and 6

After section 356—

insert—

Part 5 Special management declarations for marine mammals

Division 1 Preliminary

357 Main purposes of pt 5

The main purposes of this part are to—

- (a) ensure biologically viable populations of marine mammals are conserved or re-established, including, for example, by—
 - (i) conserving critical habitat for marine mammals; or
 - (ii) controlling or removing a threatening process; and
- (b) minimise harm and distress caused directly or indirectly to marine mammals or their habitat by human activity; and
- (c) recognise the interest of Aboriginal people and Torres Strait Islanders in marine mammals, and their involvement in the conservation of marine mammals.

358 Achieving main purposes—special management areas

- (1) To achieve the main purposes of this part, this part provides for the special management of areas that—
 - (a) include critical habitat for a marine mammal; or

- (b) are a migratory route or corridor for a marine mammal; or
 - (c) are a mating or calving ground for a marine mammal; or
 - (d) are a feeding ground for a marine mammal; or
 - (e) are otherwise regularly frequented by marine mammals; or
 - (f) are the subject of an activity for which a marine mammal is, or is to be, used under Aboriginal tradition or Island custom; or
 - (g) are the subject of scientific research relevant to the conservation of marine mammals (including, for example, by enhancing the scientific knowledge of marine mammals)—
 - (i) that is carried out by a tertiary institution or other institution administered by the Commonwealth or a State; or
 - (ii) that is carried out by an entity that is involved in scientific research; or
 - (iii) that the chief executive is satisfied is necessary, or will significantly contribute, to achieving the main purposes of this part.
- (2) Without limiting subsection (1), special management of the areas mentioned in the subsection is provided for by regulating activities carried out in the area, including, for example, by—
- (a) imposing stricter approach distances for marine mammals than otherwise provided in this regulation; and
 - (b) imposing speed restrictions for approaching marine mammals; and

- (c) prohibiting—
 - (i) the carrying out of commercial marine mammal watching activities in the area; or
 - (ii) the carrying out of commercial marine mammal watching activities in the area in a particular way.
- (3) In this section—

commercial marine mammal watching activities means activities carried out as part of a business operation involving carrying people in a boat, prohibited vessel or aircraft to watch marine mammals.

359 Achieving main purposes—special management marine mammals

- (1) To achieve the main purposes of this part, this part provides for the special management of a marine mammal that—
 - (a) is at risk of harassment, injury (or further injury) or death because the mammal is—
 - (i) a female marine mammal that has recently given, or is about to give, birth; or
 - (ii) a calf separated from a marine mammal or group of marine mammals; or
 - (iii) a stranded marine mammal or marine mammal at risk of being stranded; or
 - (iv) a morphological-variant or colour-variant marine mammal of its species; or
 - (b) may potentially be at risk of harassment, injury (or further injury) or death because

the mammal is in a place readily accessible to members of the public; or

(c) is to be used under Aboriginal tradition or Island custom.

(2) Without limiting subsection (1), special management of marine mammals mentioned in the subsection is provided for by regulating activities carried out near the mammals, including, for example, by—

(a) imposing stricter approach distances for the mammals than otherwise provided in this regulation; and

(b) imposing speed restrictions for approaching the mammals.

Division 2 Special management areas

Subdivision 1 Special management areas generally

360 Special management area

(1) The area described in schedule 2, part 1 is a special management area.

(2) Schedule 2, part 1 states the stated distance for the no approach zone for whales in the special management area.

Subdivision 2 Temporary special management areas

361 Declaration of temporary special management area

- (1) This section applies if the chief executive is satisfied—
 - (a) an area is or will be of a kind mentioned in section 358(1); and
 - (b) it is not appropriate to declare the area to be a special management area under section 360(1) because it will be an area of that kind only for a temporary period.

Example of areas to which this section may apply—

an area that has become a temporary feeding ground for a herd of dugong because the herd's permanent feeding ground has been damaged by a natural disaster

- (2) The chief executive may, in the way stated in subsection (4)—
 - (a) declare the area to be a temporary special management area for a period of not more than 60 days; and
 - (b) declare 1 or more of the following for a marine mammal in the special management area—
 - (i) the stated distance for the caution zone;
 - (ii) the stated distance for the no approach zone;
 - (iii) the prescribed distance for a prohibited vessel or aircraft;
 - (iv) the prescribed distance for a person entering or in water;

- (v) that a person in control of a boat must not bring the boat within a stated distance of the mammal at a stated speed; and

Examples of speeds that may be stated—

a speed of more than 6 knots, a speed that creates a wake

- (c) declare activities that are prohibited activities for the area.
- (3) The chief executive may make a declaration under subsection (2) only if the chief executive is satisfied the declaration is necessary to achieve the main purposes of this part.
 - (4) The chief executive may make a declaration under subsection (2) by—
 - (a) gazette notice; or
 - (b) subject to subsection (5), a notice published in—
 - (i) a newspaper circulating generally throughout Queensland; and
 - (ii) a newspaper circulating generally in the area in which the temporary special management area the subject of the declaration is located.
 - (5) The chief executive need not publish notice of the declaration under subsection (4)(b)(ii) if the chief executive is satisfied that publishing the notice under subsection (4)(b)(i) and (6) will give sufficient notice of the declaration to the people particularly affected by it, having regard to—
 - (a) the area the subject of the declaration; and
 - (b) the activities to be regulated in the area.
 - (6) The chief executive—

- (a) must also publish a copy of the notice on the department's website and, if practicable, on a sign erected—
 - (i) at or near a usual access point to the area the subject of the temporary special management area declaration; or
 - (ii) in a position that would normally be seen by a person accessing the area the subject of the temporary special management area declaration; and
- (b) may publish the temporary special management declaration in any other way the chief executive considers appropriate.

Examples of other ways—

radio announcements, publication on other websites

362 Form of declaration

A declaration under section 361 must—

- (a) identify the limits of the area the subject of the declaration; and
- (b) state the reasons for the declaration; and
- (c) include the declarations under section 361(2)(b) applying to the area the subject of the declaration; and
- (d) state the nature of the offence against this regulation arising from each declaration mentioned in paragraph (c), and the maximum penalty under this regulation for the offence; and
- (e) state the period for which the declaration will be in force.

363 Term of declaration

A declaration under section 361—

- (a) takes effect—
 - (i) when the notice for the declaration is published under section 361(4); or
 - (ii) if a later time is stated in the notice—at the later time; and
- (b) applies for the period stated in the notice unless—
 - (i) the period is extended under section 364; or
 - (ii) the declaration is repealed under section 365.

364 Extension of period of declaration

- (1) If the chief executive is satisfied the reasons for making a declaration under section 361 will still exist after the period stated in the notice for the declaration as the period for which the declaration will be in force, the chief executive may extend the period for a further period of not more than 120 days.
- (2) Before extending the period under subsection (1), the chief executive must—
 - (a) publish a notice about the proposed extension—
 - (i) in a newspaper likely to be read by people particularly affected by the proposed extension; and
 - (ii) on the department’s website; and
 - (b) have regard to any submissions received under subsection (3)(b).
- (3) The notice must state that—

- (a) consideration is being given to extending the period for which the declaration will be in force; and
- (b) people are invited to make written submissions in relation to the proposed extension within a period of at least 7 days stated in the notice.

365 Repeal of declaration

If the chief executive is satisfied the reasons for making a declaration under section 361 no longer exist, the chief executive must repeal the declaration as soon as practicable.

Division 3 Special management marine mammals

Subdivision 1 Special management marine mammals generally

366 Special management marine mammals

- (1) The marine mammal described in schedule 2, part 2 is a special management marine mammal.
- (2) Schedule 2, part 2 states the following for the special management marine mammal—
 - (a) the stated distance for the no approach zone;
 - (b) the prescribed distances for a prohibited vessel and an aircraft.

Subdivision 2 Temporary special management marine mammals

367 Declaration of temporary special management marine mammal

- (1) This section applies if the chief executive is satisfied—
 - (a) a marine mammal, or 1 or more marine mammals in a group, is of a kind mentioned in section 359(1); and
 - (b) it is not appropriate to declare the mammal or mammals to be a special management marine mammal under section 366(1) because the mammal or mammals will be of that kind only for a temporary period.
- (2) The chief executive may, in the way stated in subsection (4)—
 - (a) declare the marine mammal, or all the marine mammals in the group, to be a temporary special management marine mammal for a period of not more than 1 year; and
 - (b) declare 1 or more of the following for the marine mammal or marine mammals—
 - (i) the stated distance for the caution zone;
 - (ii) the stated distance for the no approach zone;
 - (iii) the prescribed distance for a prohibited vessel or aircraft;
 - (iv) the prescribed distance for a person entering or in water;
 - (v) that a person in control of a boat must not bring the boat within a stated

distance of the mammal at a stated speed.

Examples of speeds that may be stated—

a speed of more than 6 knots, a speed that creates a wake

- (3) However, the chief executive may make a declaration under subsection (2) only if the chief executive is satisfied the declaration is necessary to—
- (a) achieve the main purposes of this part; or
 - (b) ensure the safety, health and wellbeing of humans.
- (4) Subject to subsection (5), the chief executive may make a declaration under subsection (2) by—
- (a) gazette notice; or
 - (b) a notice published in—
 - (i) a newspaper circulating generally throughout Queensland; and
 - (ii) a newspaper circulating generally in the area in which the temporary special management marine mammal the subject of the declaration is or is likely to be located.
- (5) The chief executive need not publish notice of the declaration under subsection (4)(b)(ii) if the chief executive is satisfied that publishing the notice under subsection (4)(b)(i) and (6) will give sufficient notice of the declaration to the people particularly affected by it, having regard to—
- (a) the nature of the temporary special management marine mammal; and
 - (b) the area in which the mammal is or is likely to be located.
- (6) The chief executive—

- (a) must also publish a copy of the notice on the department's website and, if practicable, on a sign erected—
 - (i) at or near a usual access point to an area in which the temporary special management marine mammal the subject of the declaration is or is likely to be located; or
 - (ii) in a position that would normally be seen by a person accessing an area in which the temporary special management marine mammal the subject of the declaration is or is likely to be located; and
- (b) may publish the temporary special management declaration in any other way the chief executive considers appropriate.

Examples of other ways—

radio announcements, publication on other websites

368 Effect of declaration for a group of marine mammals

- (1) This section applies if all the marine mammals in a group are declared to be a temporary special management marine mammal.
- (2) Each of the marine mammals in the group is a special management marine mammal at all times the mammal is a member of the group.

369 Form of declaration

A declaration under section 367 must—

- (a) identify the marine mammal or marine mammals the subject of the declaration; and

Example of how a marine mammal may be identified—

naming the species of marine mammal and describing the unique characteristics of the mammal

- (b) state the reasons for the declaration; and
- (c) include the declarations under section 367(2)(b) applying to the marine mammal or marine mammals the subject of the declaration; and
- (d) state the nature of the offence against this regulation arising from each declaration mentioned in paragraph (c), and the maximum penalty under this regulation for the offence; and
- (e) state the period for which the declaration will be in force.

370 Term of declaration

A declaration under section 367—

- (a) takes effect—
 - (i) when the notice for the declaration is published under section 367(4); or
 - (ii) if a later time is stated in the notice—at the later time; and
- (b) applies for the period stated in the notice.

371 Repeal of declaration

If the chief executive is satisfied the reason for making a declaration under section 367 no longer exists, the chief executive must repeal the declaration as soon as practicable.

Part 6 Stranded marine mammals

372 Reference to stranded marine mammal in pt 6

In this part a reference to a stranded marine mammal includes a reference to a marine mammal at risk of being stranded.

373 Powers of conservation officer

- (1) A conservation officer may take the measures the officer considers reasonably necessary to protect or deal with a stranded marine mammal.
- (2) Without limiting subsection (1), a conservation officer may—
 - (a) direct the treatment or, if necessary, the humane killing of a stranded marine mammal; or
 - (b) ask a person to move, or help move, a stranded marine mammal to another place for release or treatment.
- (3) Also, without limiting subsection (1), a conservation officer may direct a person, or a person in control of a boat, prohibited vessel, aircraft or vehicle, at a site where a marine mammal is stranded to—
 - (a) keep a stated distance from the mammal; or
 - (b) move the boat, prohibited vessel, aircraft or vehicle in the person's control to a stated place or a stated distance from the mammal.
- (4) A person given a direction under subsection (2)(a) or (3) must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (4)—165
penalty units.

**374 Authorised taking, keeping or use of a
stranded marine mammal that is dead or dies**

If a stranded marine mammal is dead or dies—

- (a) the chief executive may, in writing, authorise—
 - (i) a person to take, keep or use the mammal to carry out scientific research; or
 - (ii) the Queensland Museum to take, keep or use the mammal to carry out the museum’s research; and
- (b) the person or museum may take, keep or use the mammal as mentioned in the authority.

18 Amendment of sch 1 (Processed products)

Schedule 1, part 1, heading, ‘Definition’—

omit, insert—

Preliminary

19 Renumbering of schs 2–4

Schedules 2 to 4—

renumber as schedules 3 to 5.

20 Insertion of new sch 2

After schedule 1—

insert—

Schedule 2 Special management declarations

sections 360 and 366

Part 1 Special management area

1 Description

The Whitsunday whale protection area described in the *Great Barrier Reef Marine Park Regulations 1983* (Cwlth), schedule 2, part 2.

2 Distance for no approach zone for whales

The stated distance for the no approach zone for a whale in the special management area is 300m.

Part 2 Special management marine mammals

1 Description

A humpback whale with a body pigmentation that is over 90% white in colour.

2 Distance for no approach zone

The stated distance for the no approach zone for the special management marine mammal is 500m.

3 Prescribed distances for prohibited vessel and aircraft

For the special management marine mammal—

- (a) the prescribed distance for a prohibited vessel is 500m; and
- (b) the prescribed distance for an aircraft is 610m.

21 Amendment of sch 4 (Relevant protected animals)

Schedule 4, as renumbered by this regulation, authorising provision, ‘schedule 4’—

omit, insert—

schedule 5

22 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, as renumbered by this regulation, definitions *dolphin, Dugong Conservation Plan* and *Whale and Dolphin Conservation Plan*—

omit.

- (2) Schedule 5, as renumbered by this regulation—

insert—

boat does not include a prohibited vessel.

caution zone—

- 1 The *caution zone* for a marine mammal is—

- (a) for a special management marine mammal, if the special management declaration for the mammal includes a stated distance for the caution zone for the mammal—an area outside the no approach zone for the mammal but within the stated distance from the mammal; or

- (b) for a marine mammal in a special management area, if the special management declaration for the area includes a stated distance for the caution zone for the mammal—an area outside the no approach zone for the mammal but within the stated distance from the mammal; or
 - (c) for a whale other than a whale to which paragraph (a) or (b) applies—an area outside the no approach zone for the whale but within a distance of 300m from the whale; or
 - (d) for a dolphin other than a dolphin to which paragraph (a) or (b) applies—an area outside the no approach zone for the dolphin but within a distance of 150m from the dolphin.
- 2 However, there is no caution zone for a marine mammal mentioned in paragraph 1 if, because of a special management declaration, there is no area that is outside the no approach zone and within the distance mentioned in paragraph 1 for the mammal.

dolphin means a member of the family Delphinidae or the family Phocoenidae.

dugong means the mammal *Dugong dugon*.

helicopter includes a gyrocopter.

motorised diving aid means a vessel that has a motor and is used to aid diving.

Examples—

a diver propulsion vehicle, an underwater scooter

no approach zone means—

- (a) for a special management marine mammal, if the special management declaration for the mammal includes a stated distance for the no approach zone for the mammal—the stated distance; or
- (b) for a marine mammal in a special management area, if the special management declaration for the area includes a stated distance for the no approach zone for the mammal—the stated distance; or
- (c) for a whale other than a whale to which paragraph (a) or (b) applies—
 - (i) 100m from the whale; or
 - (ii) 300m from any point within an arc of 30 degrees from either side of the front or rear of the whale; or
- (d) for a dolphin other than a dolphin to which paragraph (a) or (b) applies—
 - (i) 50m from the dolphin; or
 - (ii) 150m from any point within an arc of 30 degrees from either side of the front or rear of the dolphin.

person in control, of a boat, prohibited vessel, or aircraft, includes—

- (a) the person in command of the boat, vessel, or aircraft; or
- (b) the person who appears to be in control or command of the boat, vessel, or aircraft.

prohibited vessel means a hovercraft, hydrofoil, jet ski, motorised diving aid, parasail or wing in ground effect craft.

special management area means—

- (a) an area declared to be a special management area under section 360(1); or
- (b) an area declared to be a temporary special management area under section 361.

special management declaration means—

- (a) for a special management area—a declaration under section 360(1) or 361; or
- (b) for a special management marine mammal—a declaration under section 366(1) or 367.

special management marine mammal means—

- (a) a marine mammal declared to be a special management marine mammal under section 366(1); or
- (b) a marine mammal declared to be a temporary special management marine mammal under section 367.

stranded, for a marine mammal, means the mammal is—

- (a) aground on a shore; or
- (b) in a helpless state; or

Examples of a marine mammal in a helpless state—

- an entangled marine mammal
- an incapacitated marine mammal

- (c) sick, injured or dead.

wake means a breaking wave created in water by a moving boat or prohibited vessel.

wing in ground effect craft means a vessel constructed to move above the surface of the water using ground effect to lift off, land and maintain a limited altitude.

- (3) Schedule 5, as renumbered by this regulation, definition *commercial animal*, ‘schedule 3’—
omit, insert—
 schedule 4
- (4) Schedule 5, as renumbered by this regulation, definition *controlled animal*, ‘schedule 3’—
omit, insert—
 schedule 4
- (5) Schedule 5, as renumbered by this regulation, definition *exempt animal*, ‘schedule 3’—
omit, insert—
 schedule 4
- (6) Schedule 5, as renumbered by this regulation, definition *recreational animal*, ‘schedule 3’—
omit, insert—
 schedule 4
- (7) Schedule 5, as renumbered by this regulation, definition *relevant protected animal*, ‘schedule 3’—
omit, insert—
 schedule 4
- (8) Schedule 5, as renumbered by this regulation, definition *restricted animal*, ‘schedule 3’—
omit, insert—
 schedule 4

Part 3 Amendment of Marine Parks (Great Sandy) Zoning Plan 2006

23 Zoning plan amended

This part amends the *Marine Parks (Great Sandy) Zoning Plan 2006*.

24 Amendment of s 52 (Application of sdiv 2)

Section 52, notes, note 1—

omit, insert—

1 The *Nature Conservation (Wildlife Management) Regulation 2006* includes restrictions that apply to whales at all times. See, for example, chapter 7, part 5A of that regulation.

25 Omission of ss 54, 55 and 57

Sections 54, 55 and 57—

omit.

26 Replacement of s 56 (Protection of whales)

Section 56—

omit, insert—

56 Restriction on use of submersible boats

A person must not, without a permission, operate a submersible boat in the whale management area.

Maximum penalty—100 penalty units.

Part 4 **Amendment of Marine Parks (Moreton Bay) Zoning Plan 2008**

27 **Zoning plan amended**

This part amends the *Marine Parks (Moreton Bay) Zoning Plan 2008*.

28 **Amendment of s 97 (Limited impact research (non-extractive))**

Section 97(1)(d)—
omit.

Part 5 **Amendment of Marine Parks Regulation 2006**

29 **Regulation amended**

This part amends the *Marine Parks Regulation 2006*.

30 **Amendment of s 18 (Restriction on grant of permission for commercial whale watching program)**

Section 18(3), notes—
omit, insert—

Note—

The latitudes mentioned in this section are worked out using the Geocentric Datum of Australia 1994, commonly called ‘GDA94’, notified in the Commonwealth Government Gazette No. GN 35 on 6 September 1995, at page 3369.

Part 6 **Amendment of State Penalties Enforcement Regulation 2000**

31 Regulation amended

This part amends the *State Penalties Enforcement Regulation 2000*.

32 Amendment of sch 2 (Environmental legislation)

(1) Schedule 2, entry for *Marine Parks (Great Sandy) Zoning Plan 2006*, entries for sections 54, 55(1) and 55(2)—

omit.

(2) Schedule 2, entry for *Nature Conservation (Whales and Dolphins) Conservation Plan 1997*—

omit.

(3) Schedule 2, entry for *Nature Conservation (Wildlife Management) Regulation 2006*, entry for section 322(2)—

omit.

(4) Schedule 2, entry for *Nature Conservation (Wildlife Management) Regulation 2006*—

insert—

s 60A(2)	4
s 60A(4)	4
s 322(2)	5
s 322A(2)	4
s 338B(2)	5
s 338D	4
s 338E in the circumstances in paragraph (a) of the penalty	5
s 338E in the circumstances in paragraph (b) of the penalty	4

s 338F(1)	in the circumstances in paragraph (a) of the penalty	5
s 338F(1)	in the circumstances in paragraph (b) of the penalty	4
s 338G(2)	in the circumstances in paragraph (a) of the penalty	5
s 338G(2)	in the circumstances in paragraph (b) of the penalty	4
s 338H(2)	in the circumstances in paragraph (a) of the penalty	5
s 338H(2)	in the circumstances in paragraph (b) of the penalty	4
s 338K(3)	in the circumstances in paragraph (a) of the penalty	5
s 338K(3)	in the circumstances in paragraph (b) of the penalty	5
s 338K(3)	in the circumstances in paragraph (c) of the penalty	4
s 338L(1)	in the circumstances in paragraph (a) of the penalty	5
s 338L(1)	in the circumstances in paragraph (b) of the penalty	4
s 338M(1)	in the circumstances in paragraph (a) of the penalty	5
s 338M(1)	in the circumstances in paragraph (b) of the penalty	4
s 338N	.....	4
s 338O(1)	in the circumstances in paragraph (a) of the penalty	5
s 338O(1)	in the circumstances in paragraph (b) of the penalty	4
s 338P(3)	in the circumstances in paragraph (a) of the penalty	5
s 338P(3)	in the circumstances in paragraph (b) of the penalty	4

s 338Q(1)	in the circumstances in paragraph (a) of the penalty	5
s 338Q(1)	in the circumstances in paragraph (b) of the penalty	4
s 338Q(2)	in the circumstances in paragraph (a) of the penalty	5
s 338Q(2)	in the circumstances in paragraph (b) of the penalty	4
s 338Q(6)	in the circumstances in paragraph (a) of the penalty	5
s 338Q(6)	in the circumstances in paragraph (b) of the penalty	4
s 338R(1)	.....	5
s 338S(1)(a)	.....	3
s 338S(1)(c)	.....	3
s 338S(1)(d)	.....	3
s 373(4)	.....	5

Part 7 **Amendment of Statutory Instruments Regulation 2012**

33 **Regulation amended**

This part amends the *Statutory Instruments Regulation 2012*.

34 **Amendment of sch 2 (Exemptions from expiry under part 7 of the Act)**

Schedule 2, part 2, entries for the *Nature Conservation (Dugong)
Conservation Plan 1999* and the *Nature Conservation (Whales and
Dolphins) Conservation Plan 1997*—

omit.

Part 8 **Repeals**

35 **Repeals**

The following plans are repealed—

- Nature Conservation (Dugong) Conservation Plan 1999, SL No. 155
- Nature Conservation (Whales and Dolphins) Conservation Plan 1997, SL No. 378.

ENDNOTES

- 1 Made by the Governor in Council on 9 May 2013.
- 2 Notified in the gazette on 10 May 2013.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Environment and Heritage Protection.

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