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SPECIAL SUPPLEMENT



New South Wales

Marine Parks Amendment (Lord Howe Island and Other Amendments) Regulation 2004

under the
Marine Parks Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Parks Act 1997*.

BOB DEBUS, M.P.,
Minister for the Environment

IAN MICHAEL MACDONALD, M.L.C.,
Minister for Primary Industries

Explanatory note

The objects of this Regulation are:

- (a) to make miscellaneous amendments to a number of provisions in the main body of the *Marine Parks Regulation 1999*, and
- (b) to establish a zoning plan for the Lord Howe Island Marine Park by adding a new Part to Schedule 1 to that Regulation.

The miscellaneous amendments referred to in paragraph (a) above include provisions for the following purposes (see Schedule 1):

- (a) to provide that an anchor is excluded from the definition of **mooring** only if it is retrieved onto a vessel when not in use (Schedule 1 [2]),
- (b) to designate a contravention of clause 7 (Protection of animals, plants and habitat in sanctuary zone) as a serious offence the contravention of which gives rise to a maximum penalty of 1,000 penalty units in the case of a corporation, or 500 penalty units in any other case (by virtue of section 17A of the *Marine Parks Act 1997*) (Schedule 1 [3] and [4]),
- (c) to prohibit fishing from a mooring in the sanctuary zone of a marine park, being a mooring provided by or on behalf of the Marine Parks Authority (Schedule 1 [6]: proposed clause 9A),
- (d) to make it clear that the prohibition on attaching a vessel to another vessel that is attached to a mooring in a marine park that is provided by or on behalf of the Authority does not apply to attachment to a vessel's tender (Schedule 1 [7]),

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- (e) to provide for a marine park ranger to direct the master of a vessel to remove the vessel from a marine park if it is heavily fouled by marine organisms (Schedule 1 [8]: proposed clause 20A),
 - (f) to prohibit the taking of any species identified in a zoning plan as a protected species in a marine park and the harming of any species identified in a zoning plan as a protected species while in a marine park, except with the consent of the relevant Ministers, to designate the contravention of those prohibitions as a serious offence (Schedule 1 [9]: proposed clause 22A) and to make consequential amendments to the existing zoning plans (Schedule 1 [25] and [27]),
 - (g) to exempt the operation of certain commercial vessels that pass through marine parks from the prohibition on commercial activities in a marine park (Schedule 1 [13]),
 - (h) to further regulate filming activities in marine parks (Schedule 1 [14]: proposed clause 24A),
 - (i) to clarify that anchoring or mooring a vessel in contravention of a zoning plan is an offence, in the same way as use in contravention of a zoning plan is an offence (Schedule 1 [15] and [16]),
 - (j) to prohibit the leaving of any unattended floating device or structure in a marine park (Schedule 1 [18]: proposed clause 29),
 - (k) to prohibit the lighting of fires on emergent lands within a marine park (Schedule 1 [18]: proposed clause 30),
 - (l) to make provision regarding the giving of consent by relevant Ministers to the carrying out of any activity in a marine park, including the making of applications for consent, the granting of consent in the form of a permit and the variation, suspension, cancellation or surrender of permits (Schedule 1 [19]: proposed Part 3A),
 - (m) to double the maximum penalty for failing to leave a marine park when directed to do so by a marine park ranger (Schedule 1 [20]),
 - (n) to empower a marine park ranger to direct the removal from a marine park of property that is causing annoyance or inconvenience or is likely to create an environmental hazard (Schedule 1 [21]: proposed clause 33A),
 - (o) to make certain offences under the Act and the Regulation penalty notice offences (Schedule 1 [28] and [29]),
 - (p) to increase the penalty amounts for certain penalty notice offences (Schedule 1 [30] and [31]),
 - (q) to make other minor, consequential or ancillary amendments (Schedule 1 [1], [5], [10], [11], [12], [17], [22], [23], [24] and [26]).

The zoning plan for the Lord Howe Island Marine Park referred to in paragraph (b) above includes provisions for the following purposes (see Schedule 2):

- (a) to define certain expressions for the purposes of the plan (Division 1),
- (b) to establish sanctuary zones and regulate fish cleaning and anchoring within those zones (Division 2),

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- (c) to establish a habitat protection zone and regulate fishing and aquaculture within that zone (Division 3),
- (d) to establish special purpose zones and to regulate fish feeding within those zones (Division 4),
- (e) to regulate fishing, aquarium collecting, spearfishing and the cleaning of fish generally throughout the marine park (Division 5),
- (f) to identify protected species of fish for the purposes of clause 22A of the Regulation (Division 6),
- (g) to regulate the taking of domesticated animals onto the emergent lands within the marine park (Division 7),
- (h) to regulate the use, mooring and anchoring of vessels, vehicles and aircraft within the marine park (Division 8),
- (i) to identify various classes of fish for the purposes of the plan (Division 9),
- (j) to depict various areas of the marine park by reference to maps (Division 10).

This Regulation is made under the *Marine Parks Act 1997*, including sections 15 (Regulations relating to marine parks generally), 16 (Regulations relating to zoning plans for marine parks) and 48 (the general regulation-making power).

Clause 1 Marine Parks Amendment (Lord Howe Island and Other Amendments)
Regulation 2004

Marine Parks Amendment (Lord Howe Island and Other Amendments) Regulation 2004

under the

Marine Parks Act 1997

1 Name of Regulation

This Regulation is the *Marine Parks Amendment (Lord Howe Island and Other Amendments) Regulation 2004*.

2 Commencement

This Regulation commences on 1 December 2004.

3 Amendment of Marine Parks Regulation 1999

The *Marine Parks Regulation 1999* is amended as set out in Schedules 1 and 2.

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(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

commercial fishing means taking, or attempting to take, fish for sale.

permit means a permit under Part 3A.

personal watercraft means a power-driven vessel that:

- (a) has a fully enclosed hull, and
- (b) does not retain water taken on if it capsizes, and
- (c) is designed to be operated by a person standing, sitting astride or kneeling on the vessel but not seated within the vessel.

recreational fishing means taking, or attempting to take, fish otherwise than for sale.

[2] Clause 3, definition of “mooring”

Omit “the anchor of a vessel”.

Insert instead “a vessel’s anchor that is retrieved by the vessel when not in use”.

[3] Clause 7 Protection of animals, plants and habitat in sanctuary zone

Omit the penalty from clause 7 (1).

[4] Clause 7 (3)

Insert after clause 7 (2):

- (3) For the purposes of section 17A of the Act, a contravention of subclause (1) is designated as a serious offence.

[5] Clause 9 Vessels to be anchored or moored only at designated sites

Omit “designated by the relevant Ministers for that purpose” from clause 9 (1).

Insert instead “designated for that purpose by the relevant Ministers or by the relevant zoning plan”.

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[6] Clause 9A

Insert after clause 9:

9A Fishing not permitted from certain moorings

A person must not fish, or attempt to fish, from a mooring in the sanctuary zone of a marine park, being a mooring provided by or on behalf of the Authority.

Maximum penalty: 100 penalty units.

[7] Clause 20 Protection of marine park moorings, buoys, signs and facilities

Insert after clause 20 (3) (before the penalty to the clause):

- (4) It is not an offence against subclause (3) to attach a vessel to the vessel's tender.

[8] Clause 20A

Insert after clause 20:

20A Heavily fouled hulls

- (1) A marine park ranger may direct the master of a vessel to remove the vessel from the marine park if the ranger reasonably believes that the vessel's hull or machinery is so heavily fouled by marine organisms as to pose a significant risk of the introduction of exotic animals or plants into the marine park.
- (2) A master of a vessel must comply with a direction made under this clause.

Maximum penalty: 100 penalty units.

[9] Clause 22A

Insert after clause 22:

22A Protected species

- (1) A person must not in a marine park:
- (a) take, or attempt to take, any species of fish identified as a protected species in the zoning plan for the marine park, or

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- (b) harm, or attempt to harm, any species of fish identified as a protected species in the zoning plan for the marine park,

except with the consent of the relevant Ministers.

- (2) For the purposes of section 17A of the Act, a contravention of subclause (1) is designated as a serious offence.

[10] Clause 24 Commercial activities

Omit “or” where lastly occurring in clause 24 (1) (b).

[11] Clause 24 (1) (c)

Omit the paragraph.

[12] Clause 24 (3)

Omit “subclause (1) (a), (b) or (c)”.

Insert instead “subclause (1) (a) or (b)”.

[13] Clause 24 (4)

Insert before the note to clause 24:

- (4) A person does not commit an offence against subclause (1) (b) if the person carries out an activity described in that paragraph in a marine park without the consent of the relevant Ministers if the activity only involves a commercial vessel passing through a marine park to a destination outside the marine park by the most direct and expeditious route and:
- (a) the person does not undertake any commercial activities within the marine park other than those required to safely navigate and operate the vessel through the marine park, and
 - (b) the person does not specifically advertise passing through the marine park as part of the person’s commercial activity, and
 - (c) the passage through the marine park does not include anchoring, mooring or docking within the marine park except where required for safety reasons, and
 - (d) the passage through the marine park does not include onboard commercial activities relating to the provision of any information concerning the marine park and its

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values, including scenic tours and environmental interpretation activities, and

- (e) the passage through the marine park does not involve the use of hovercraft vessels, personal watercraft or aircraft.

[14] Clause 24A

Insert after clause 24:

24A Filming activities

A person must not take any photograph, or film any video, movie or television film, in a marine park, if the photographing or filming:

- (a) requires the use of structures (other than portable tripods), film sets or machinery, or
- (b) involves actors or professional models, or
- (c) has the potential to impact on marine biodiversity or habitat, or
- (d) has the potential to exclude an area of the marine park from use by other users,

except with the consent of the relevant Ministers.

Maximum penalty: 100 penalty units.

[15] Clause 27 Use, mooring or anchoring of motorised vessels, vehicles and equipment

Insert “, mooring and anchoring” after “use” in clause 27 (1).

[16] Clause 27 (2)

Insert “, moor or anchor” after “use”.

[17] Clause 27A Fish feeding

Insert “or as permitted by the relevant zoning plan” after “except with the consent of the relevant Ministers” in clause 27A (1).

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[18] Clauses 29 and 30

Insert after clause 28:

29 Fish attracting devices

A person must not leave any floating device or floating structure unattended in a marine park except with the consent of the relevant Ministers.

Maximum penalty: 50 penalty units.

30 Lighting fires

- (1) A person must not light any fire on any beach, reef or other emergent land within a marine park except with the consent of the relevant Ministers or as permitted by the relevant zoning plan.

Maximum penalty: 100 penalty units.

- (2) Subclause (1) does not apply to the lighting of fires:
- (a) on board any vessel, or
 - (b) within any barbecue area established by the public or local authority having the care, control and management of the land concerned.

[19] Part 3A

Insert after Part 3:

Part 3A Consent of relevant Ministers

Note.

Various provisions of this Regulation prohibit a person from carrying out certain activities in a marine park except with the consent of the relevant Ministers. This Part sets out the process for applying for consent (which is given in the form of a permit) and makes provision regarding the granting, variation, suspension, cancellation and surrender of permits.

31 Principal assessment criteria

For the purposes of this Part, the following matters are the *principal assessment criteria* in relation to any proposed activity:

- (a) the objects of the Act (as specified in section 3 of the Act),

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- (b) the objects of the zone in which the activity is proposed to be carried out (as specified in the relevant zoning plan),
- (c) the activities that are permissible in the zone in which the activity is proposed to be carried out (as specified in the relevant zoning plan),
- (d) any operational plan for the marine park adopted by the relevant Ministers pursuant to section 25 (7) of the Act,
- (e) any threatened species or other protected flora or fauna under the *Fisheries Management Act 1994*, the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995* that may be affected by the proposed activity,
- (f) any cultural aspects of the marine park, either Aboriginal or non-Aboriginal,
- (g) the natural resources of the marine park,
- (h) the form of transport to be used to gain access to the zone in which the activity is proposed to be carried out or on or from which the activity is proposed to be carried out, having regard to the adequacy of facilities for parking, mooring and landing vehicles, vessels and aircraft, and for loading and unloading them,
- (i) the type of equipment to be used in connection with the proposed activity,
- (j) the arrangements that have been made for the making good of any damage to the marine park that arises from the proposed activity,
- (k) the requirements of any other law with respect to the carrying out of the proposed activity,
- (l) such other requirements as the relevant Ministers consider appropriate to the proposed activity.

32 Restriction of number of permits that may be issued

- (1) The relevant Ministers may from time to time determine, in relation to a marine park or a zone within a marine park:
 - (a) the maximum number of permits that may be in force at any one time in relation to the marine park or zone, either generally or in relation to specified activities or classes of activities, and

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- (b) for each activity in respect of which a maximum number has been determined, the priority to be given to different classes of applicant in the consideration of any application for a permit.
 - (2) In making a determination under this clause, the relevant Ministers must have regard to the following:
 - (a) any existing use within the marine park or zone as at the time the marine park or zone came into existence,
 - (b) the environmental, cultural or social impact of any such use,
 - (c) whether or not any such use is consistent with the principal assessment criteria.

32A Applications for permits

An application for the consent of the relevant Ministers to the carrying out of an activity in a marine park must be made in the form approved by the relevant Ministers.

Note. Section 307A of the *Crimes Act 1900* makes it an offence to make a false or misleading statement in, or a misleading omission from, an application for a permit.

32B Relevant Ministers may ask for further information

- (1) The relevant Ministers may make a written request to any person who has made an application for consent to carry out any activity, asking for further information to assist the Ministers in considering the application.
- (2) The relevant Ministers do not have to consider an application if any request for further information is not complied with within the time specified by the relevant Ministers in the request.

32C Relevant Ministers must take into account principal assessment criteria

- (1) The relevant Ministers must have regard to the principal assessment criteria in deciding whether or not to give consent to the carrying out of any activity in a marine park.
- (2) This clause does not apply to applications for consent to carry out activities that the relevant Ministers consider will have minimal impact on the biodiversity, enjoyment or use of the marine park.

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- (3) This clause does not limit the factors that the relevant Ministers may have regard to when considering an application for consent to carry out an activity.

32D Relevant Ministers must refuse consent in certain circumstances

- (1) The relevant Ministers must not give consent to the carrying out of any activity in a marine park that, in the opinion of the relevant Ministers, is inconsistent with the objects of the Act.
- (2) Except in emergencies, the relevant Ministers must not give consent to the carrying out of any activity in a zone of a marine park that, in the opinion of the relevant Ministers, is inconsistent with the objects of the zone.
- (3) The relevant Ministers must not give consent to the carrying out of any activity contrary to the provisions of any determination in force under clause 32.

32E Relevant Ministers may refuse consent in certain other circumstances

- (1) The relevant Ministers may refuse to give consent to the carrying out of any activity in a marine park if:
- (a) the application for consent was not made in the approved form, or
- (b) the applicant has failed to respond to a request for further information made under clause 32B or has responded in a way that the relevant Ministers consider is unsatisfactory, or
- (c) the applicant has been convicted of an offence under the Act or this Regulation, or under similar legislation of another jurisdiction, in the 12 months before the application was made, or
- (d) the applicant has been issued with 2 or more penalty notices for offences under the Act or this Regulation in the 12 months before the application was made, being penalty notices that were not later dismissed by a court, or
- (e) the proposed activity is inconsistent with the principal assessment criteria (to the extent that those criteria are applicable to the application).

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- (2) This clause does not limit the factors that the relevant Ministers may take into account when considering an application for consent under this Part.

32F Consent to be given in form of permit

The consent of the relevant Ministers to the carrying out of an activity in a marine park is to be given in the form of a written permit.

32G Permit may be granted subject to conditions

- (1) A permit is subject to any conditions that are specified in the permit.
- (2) The holder of a permit who contravenes any condition of the permit is guilty of an offence.

Maximum penalty: 100 penalty units.

32H Permit may authorise others

- (1) A permit may authorise specified persons or a specified class of persons in addition to the person to whom the permit is granted to carry out the activities to which the permit relates.
- (2) In any such case, the specified persons, or class of persons, are taken to be holders of the permit for the purposes of this Regulation.

32I Term of permit

Unless sooner suspended or cancelled, a permit remains in force for such period as is specified in the permit.

32J Variation of permit

The relevant Ministers may, by written notice to the holder of a permit, vary the conditions of the permit, or add conditions to a permit granted without conditions, for any of the following reasons:

- (a) the holder has not complied with a condition of the permit,

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- (b) the holder has made a statement or an omission in, or in connection with, the holder's application for the permit that was, in the opinion of the relevant Ministers, false or misleading,
- (c) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, the activity has resulted in damage, degradation or disruption to the physical environment, or the living resources of the marine park,
- (d) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, there is a likely or imminent threat that the activity will result in damage, degradation or disruption to the physical environment, to the living resources of the marine park or to the appreciation, understanding and enjoyment of the marine park by other persons,
- (e) the carrying out of activities in accordance with the permit would be inconsistent with the objects of the Act.

32K Suspension of permit

- (1) A permit granted under this Part may be suspended by the relevant Ministers for any of the following reasons:
 - (a) the holder has not complied with a condition of the permit,
 - (b) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, the activity to which the permit relates has resulted in damage, degradation or disruption to the physical environment, or the living resources of the marine park,
 - (c) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, there is a likely or imminent threat that the activity will result in damage, degradation or disruption to the physical environment, to the living resources of the marine park or to the appreciation, understanding and enjoyment of the marine park by other persons,
 - (d) any other reason that the relevant Ministers consider appropriate having regard to the objects of the Act.

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- (2) The relevant Ministers may include in the notice suspending a permit a warning that the permit will be cancelled if the action specified in the notice is not taken within the time specified in the notice.
 - (3) The suspension of a permit takes effect on the date specified in the notice of the suspension (being a date occurring on or after the date on which the notice is given).
 - (4) While a suspension is in force, the holder of the permit is taken not to have the consent of the relevant Ministers to carry out the activity to which the permit relates.
 - (5) The relevant Ministers may, at any time, remove a suspension of a permit.

32L Cancellation of permit

- (1) A permit under this Part may be cancelled by the relevant Ministers for any of the following reasons:
 - (a) the holder has not complied with a condition of the permit,
 - (b) the holder has been convicted of an offence under the Act or this Regulation,
 - (c) the holder has made a statement or an omission in, or in connection with, the holder's application for the permit that was, in the opinion of the relevant Ministers, false or misleading,
 - (d) the relevant Ministers have included in a notice suspending a permit a warning that the permit will be cancelled if the action specified in the notice is not taken within the time specified in the notice and that action has not been taken within that time,
 - (e) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, the activity to which the permit relates has resulted in damage, degradation or disruption to the physical environment or to the living resources of the marine park,
 - (f) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, there is a likely or imminent threat that the activity to which the permit relates will result in

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damage, degradation or disruption to the physical environment, to the living resources of the marine park or to the appreciation, understanding and enjoyment of the marine park by other persons,

- (g) any other reason that the relevant Ministers consider appropriate having regard to the objects of the Act.
- (2) The cancellation of a permit takes effect on the date specified in the notice of the cancellation (being a date occurring on or after the date on which the notice is given).

32M Surrender of permit

A permit under this Part may be surrendered at any time by the holder of the permit giving written notice to the relevant Ministers.

32N Consent by relevant Ministers not required for certain activities

- (1) A provision of this Regulation (other than clause 7, 8A, 11, 12, 15, 16, 18A or 18B) does not require the consent of the relevant Ministers to the carrying out of any activity if planning approval has been given with respect to that activity.
- (2) In this clause, *planning approval* means:
 - (a) development consent under the *Environmental Planning and Assessment Act 1979*, or
 - (b) approval of a determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979*.

Note. Section 19 of the Act makes specific provision in relation to the application of the *Environmental Planning and Assessment Act 1979* to development within marine parks.

[20] Clause 33 Removal of persons from marine park

Omit “50 penalty units” from clause 33 (2).

Insert instead “100 penalty units”.

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[21] Clause 33A

Insert after clause 33:

33A Removal of property from marine park

- (1) A marine park ranger may direct the owner of any property (such as any vehicle, vessel or mooring) to remove the property from a marine park or any part of a marine park if, in the opinion of the marine park ranger, the property:
 - (a) is causing annoyance or inconvenience to any other person in the marine park, or
 - (b) is causing a significant impact on species or habitats, or
 - (c) is likely to create an environmental hazard.
- (2) A person must not fail to comply with such a direction.
Maximum penalty: 100 penalty units.
- (3) A marine park ranger may remove from a marine park, or any part of a marine park, any property that is not removed by its owner in accordance with a direction under this clause.

[22] Clause 34 Penalty notice offences

Insert “the Act or” after “a provision of” in clause 34 (a).

[23] Clauses 37, 37AA and 37A

Omit the clauses.

[24] Schedule 1 Zoning plans for marine parks

Omit the definition of *personal watercraft* from clause 1 (1) of Part 1.

[25] Schedule 1, Part 1, clause 21

Omit the clause. Insert instead:

21 Identification of protected species

The following species of fish are identified as protected species for the purposes of clause 22A of this Regulation:

- (a) species listed in table C,

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(b) species the harming of which is prohibited under the
Fisheries Management Act 1994.

Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.

[26] Schedule 1, Part 2

Omit the definition of *personal watercraft* from clause 1 (1).

[27] Schedule 1, Part 2, clause 21

Omit the clause. Insert instead:

21 Identification of protected species

The following species of fish are identified as protected species for the purposes of clause 22A of this Regulation:

- (a) species listed in table C,
- (b) species the harming of which is prohibited under the
Fisheries Management Act 1994.

Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.

[28] Schedule 2 Penalty notice offences

Insert before the matter relating to clause 7 (a) in the Table to the Schedule:

Offences created by a provision of the Act

Section 17A	\$500
Section 20G	\$500

Offences created by a provision of this Regulation

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[29] Schedule 2, Table

Insert in appropriate order of clauses:

Clause 9A	\$500
Clause 20A	\$200
Clause 22A	See matter above in relation to section 17A of the Act
Clause 24A	\$300
Clause 29	\$500
Clause 30 (1)	\$200
Clause 33A (2)	\$500

[30] Schedule 2, Table

Omit "\$300" wherever occurring in Column 2 of the matter relating to clause 24 (1) (a) and clause 24 (1) (b).

Insert instead "\$500".

[31] Schedule 2, Table

Omit the matter relating to clauses 24 (1) (c) and 37A (5) from Columns 1 and 2.

[32] Schedule 2, Table

Omit "\$200" from Column 2 of the matter relating to clause 27 (2).

Insert instead "\$500".

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Schedule 2 Amendments establishing Lord Howe Island Marine Park Zoning Plan

Schedule 2 Amendments establishing Lord Howe Island Marine Park Zoning Plan

(Clause 3)

Schedule 1, Part 3

Insert after Part 2:

Part 3 Lord Howe Island Marine Park Zoning Plan

Note.

The GPS co-ordinates used in this Part to describe the boundaries of the zones of the Lord Howe Island Marine Park and other areas are given in degrees and decimal minutes using the GDA94 datum.

Map 1 of the maps set out in Division 10 provides an overview of the zoning plan for the Lord Howe Island Marine Park.

Maps 2–6 provide more detail.

Division 1 Preliminary

1 Definitions

In this Part:

Lord Howe Island Lagoon means that part of the marine park that is bounded by the mean high water mark on the western coast of Lord Howe Island and the line of partially emergent reefs that lie between North Head and Little Island.

marine park means the Lord Howe Island Marine Park, as described in Part 3 of Schedule 4 to the Act.

Division 2 Sanctuary zones

2 Description of sanctuary zones

The sanctuary zones of the marine park are comprised of the following areas:

North Bay

An area bounded as follows:

- (a) commencing at a point near the centre of the emergent rock known as the Bombora (31° 31.431'S, 159° 02.419'E),

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Amendments establishing Lord Howe Island Marine Park Zoning Plan

Schedule 2

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- (b) then generally north west to a point at the mean high water mark at North Head ($31^{\circ} 31.365'S$, $159^{\circ} 02.370'E$),
 - (c) then generally east, north east and south east following the mean high water mark along the coast of Lord Howe Island to a point at the navigation marker for North Passage ($31^{\circ} 31.339'S$, $159^{\circ} 03.023'E$),
 - (d) then generally west to the point of commencement described in paragraph (a),

but excluding an area bounded by a line encircling the wreck of the "Favourite" at a radius of 50 metres from that wreck at $31^{\circ} 31.311'S$, $159^{\circ} 02.733'E$.

Sylphs Hole

The area contained within a circle with a radius of 50 metres centred on a point at $31^{\circ} 31.240'S$, $159^{\circ} 03.279'E$ near the middle of Sylphs Hole.

Admiralty Islands and Neds Beach

An area bounded as follows:

- (a) commencing at a point at the mean high water mark on the coast of Lord Howe Island approximately 120 metres east of Curio Point at $31^{\circ} 30.752'S$, $159^{\circ} 02.712'E$,
- (b) then generally north east to a point at the mean high water mark on the coast of Roach Island at the westernmost part of that island ($31^{\circ} 29.846'S$, $159^{\circ} 03.933'E$),
- (c) then generally south east along the coast of Roach Island at the mean high water mark to a point at the southernmost part of Roach Island at the mean high water mark ($31^{\circ} 30.132'S$, $159^{\circ} 04.206'E$),
- (d) then generally south to a point at the mean high water mark on the coast of Lord Howe Island at Searles Point ($31^{\circ} 31.086'S$, $159^{\circ} 04.358'E$),
- (e) then following the mean high water mark along the coast of Lord Howe Island to the point of commencement described in paragraph (a),

but excluding that area which is seaward of the mean high water mark, contained within a circle of radius 50

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metres centred on a point at the northernmost corner of the Neds Beach picnic shelter at 31° 31.129'S, 159° 04.018'E.

Lord Howe Island Lagoon

An area bounded as follows:

- (a) commencing at a point 50 metres west of the mean high water mark on the coast of Lord Howe Island at the rock-concrete interface at the western end of the airport (31° 32.173'S, 159° 04.227'E),
- (b) then generally north west to a position between North Head and South Head at 31° 32.055'S, 159° 02.604'E,
- (c) then generally south east along the alignment of North and South Heads to a position at 31° 33.534'S, 159° 03.205'E,
- (d) then generally north east to a position 50 metres south west of a point at the mean high water mark on the coast of Lord Howe Island near the navigational marker trees for Erscotts Passage (31° 32.894'S, 159° 04.447'E),
- (e) then generally north, offset 50 metres seaward of the mean high water mark along the coast of Lord Howe Island to the point of commencement described in paragraph (a),

but excluding the area that is bounded by a circle of radius 50 metres centred on a position within Erscotts Hole at 31° 32.794'S, 159° 03.668'E.

East Coast and Shelf

An area bounded as follows:

- (a) commencing at a point at the mean high water mark on the coast of Lord Howe Island 290 metres generally north west of East Point (31° 33.689'S, 159° 06.240'E),
- (b) then generally north east to a position on the outer boundary of the marine park at 31° 30.667'S, 159° 09.459'E,
- (c) then following the outer boundary of the marine park generally south east, south and south west to

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a position on the boundary at 31° 35.833'S, 159° 09.509'E,

- (d) then due west to a point at the mean high water mark on the coast of Lord Howe Island near King Point at 31° 35.833'S, 159° 04.455'E,
- (e) then following the mean high water mark along the coast of Lord Howe Island to the point of commencement described in paragraph (a).

Balls Pyramid

All parts of the marine park south of the latitude 31° 46.833'S.

Observatory Rock

All parts of the marine park within a line surrounding Observatory Rock at a distance of 50 metres seaward of the mean high water mark along the coast of Observatory Rock (such that Observatory Rock includes two rocks separated by a narrow channel).

3 Fish cleaning

- (1) A person must not clean any fish or any fishing gear in a sanctuary zone except at such fish cleaning facilities (if any) as are designated by the relevant Ministers for that purpose.
- (2) This clause does not prohibit the cleaning of fish or fishing gear while on a vessel and with the consent of the relevant Ministers.

4 Anchoring

Vessels that are less than 10 metres long may anchor in the following parts of the sanctuary zone:

- (a) anywhere within 100 metres of the eastern end of the beach at North Bay,
- (b) anywhere within the Admiralty Islands and Neds Beach sanctuary zone,
- (c) anywhere within the East Coast and Shelf sanctuary zone.

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Division 3 Habitat protection zone

5 Description of habitat protection zone

The habitat protection zone of the marine park is comprised of all parts of the marine park that are not included in a sanctuary zone or a special purpose zone.

6 Permitted fishing activities

- (1) The following fishing activities are permitted in the habitat protection zone of the marine park:
 - (a) recreational fishing, including recreational charter fishing, for any species of fish listed in table A, subject to bag limits described in table B, and using only one or more of the permitted methods,
 - (b) commercial fishing for any species of fish listed in table C, but excluding those listed in table D, and using only one or more of the permitted methods,
 - (c) the collection of dead shells and dead coral (in quantities not exceeding 1 kilogram per person per day) other than any shell or coral that is occupied by an animal or attached to a plant.

- (2) In this clause:

permitted methods means such of the following methods as are permitted by the regulations under the *Fisheries Management Act 1994*:

- (a) set lines and hand held lines, provided they are not left unattended,
- (b) bait traps,
- (c) landing nets,
- (d) dip or scoop nets, but only for taking prawns,
- (e) by hand, but only for taking rock lobster,
- (f) by hand, knife, spade, fork or pump, but only for taking yabbies, squirt worms, blood worms, beachworms, pipis or other intertidal invertebrates.

Note. The taking of fish in a habitat protection zone of the marine park is subject to the provisions of the *Fisheries Management Act 1994* and the regulations under that Act which, among other things, set bag and size limits.

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7 Aquaculture

Despite clause 13 of this Regulation, aquaculture is not permissible in the habitat protection zone of the marine park.

Division 4 Special purpose zones

8 Description of special purpose zones

The special purpose zones of the marine park comprise the following areas:

North Bay Wreck

All parts of the marine park encompassed by a circle of 50 metres radius centred on a point near the wreck of the "Favourite" in North Bay at 31°31.311'S, 159°02.733'E.

Erscotts Hole

All parts of the marine park encompassed by a circle of 50 metres radius centred on a point within Erscotts Hole at 31° 32.794'S, 159° 03.668'E.

Neds Beach

All parts of the marine park encompassed by a circle of 50 metres radius centred on a point near the north western corner of the picnic shelter at Neds Beach at 31° 31.129'S, 159° 04.018'E.

9 Zone object of special purpose zones

The object of the special purpose zones of the marine park is to allow for fish feeding without the need for the consent of the relevant Ministers.

10 Fish feeding

- (1) A person may feed fish in a special purpose zone.
- (2) This clause does not permit a person to use more than 300 grams of fish feed per day for the purpose of feeding fish.

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Division 5 General prohibitions

11 Prohibited fishing activities

- (1) A person must not engage in commercial fishing in the marine park for any species of fish listed in table D.
- (2) A person must not engage in commercial fishing in the marine park for any species of fish for use anywhere other than:
 - (a) on Lord Howe Island, or
 - (b) within 12 nautical miles of the mean high water mark on the coast of Lord Howe Island.

12 Aquarium collecting

- (1) A person must not engage in commercial fishing in the marine park for any species of fish for aquarium purposes.
- (2) A person must not engage in recreational fishing in the marine park for any species of fish for aquarium purposes except with the consent of the relevant Ministers.

13 Spears and spearguns

A person must not in the marine park take or attempt to take fish by means of a spear, speargun or similar device.

14 Cleaning of fish in Lord Howe Island Lagoon

- (1) A person must not:
 - (a) clean any fish, or
 - (b) discard the wastes and offal from fish cleaning,in any part of the Lord Howe Island Lagoon other than the area between Dawsons Point and North Passage.
- (2) This clause does not apply to fish taken from Lord Howe Island Lagoon for recreational purposes, other than fish taken in the course of recreational fishing from charter vessels.

Division 6 Species protection

15 Identification of protected species

The following species of fish are identified as protected species for the purposes of clause 22A of this Regulation:

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- (a) any species not listed in table A,
- (b) species the harming of which is prohibited under the *Fisheries Management Act 1994*.

Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.

Division 7 Domesticated animals

16 Prohibition on domesticated animals

- (1) A person must not bring a domesticated animal into the emergent lands exposed to lowest astronomical tide that are below mean high water mark of the marine park other than the following foreshores:
 - (a) between Little Island at 31° 34.109'S, 159° 04.519'E, generally north along the coast to the slipway at 31° 31.539'S, 159° 03.745'E,
 - (b) between Signal Point at 31° 31.498'S, 159° 03.612'E, generally north along the coast to the western end of Old Settlement Beach at 31° 31.155'S, 159° 03.222'E,
 - (c) between the east end of Neds Beach at 31° 31.074'S, 159° 04.110'E, generally south along the coast to the southern end of Blinkey Beach at 31° 32.608'S, 159° 05.078'E.
- (2) A person must not bring a domesticated animal into any other part of the marine park unless:
 - (a) the animal is an assistance animal (within the meaning of the *Companion Animals Act 1998*) being used by a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), or
 - (b) the animal remains confined to a vessel, or
 - (c) the person has the consent of the relevant Ministers.
- (3) This clause applies despite clause 22 of this Regulation.

Note. Clause 22 of this Regulation makes it an offence to bring a domesticated animal into a marine park except with the consent of the relevant Ministers.
- (4) This clause is subject to the following:
 - (a) the provisions of the *Companion Animals Act 1998*,

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- (b) any notice relating to the use of animals erected by the Lord Howe Island Board.

Note. Sections 14 and 30 of the *Companion Animals Act 1998* prohibit dogs and cats in certain public places.

Division 8 Use, mooring and anchoring of vessels, vehicles and aircraft

Note.

Clause 27 of this Regulation makes it an offence to use, moor or anchor any motorised vessel or vehicle in a marine park in contravention of the zoning plan for the marine park.

17 Personal watercraft, hovercraft and aircraft

- (1) A person must not use a personal watercraft or a hovercraft in any part of the marine park except for the purpose of exercising the functions of a public or local authority.
- (2) A person must not use an aircraft on the waters of the marine park except with the consent of the relevant Ministers.

18 Anchoring at Lord Howe Island Lagoon

Subject to clause 4, a person must not anchor a vessel that is longer than 5 metres within Lord Howe Island Lagoon except with the consent of the relevant Ministers.

Note. Clause 4 permits the anchoring of vessels that are less than 10 metres long anywhere within 100 metres of the eastern end of the beach at North Bay.

19 Vessels not to be anchored except at certain sites

- (1) A person must not anchor a vessel that is longer than 25 metres within the marine park except with the consent of the relevant Ministers.
- (2) Subclause (1) does not apply to the anchoring of a vessel at the following locations:
 - (a) anywhere within 200 metres of a position at 31° 31.650'S, 159° 02.430'E marked as LH1 on Chart AUS 610,
 - (b) anywhere within 200 metres of a position at 31° 30.660'S, 159° 02.960'E marked as LH2 on Chart AUS 610,

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-
- (c) anywhere within 200 metres of a position at 31° 30.780'S, 159° 04.240'E marked as LH3 on Chart AUS 610,
 - (d) anywhere within 200 metres of a position at 31° 31.450'S, 159° 04.660'E marked as LH4 on Chart AUS 610,
 - (e) anywhere within 200 metres of a position at 31° 33.350'S, 159° 03.390'E marked as LH5 on Chart AUS 610,
 - (f) anywhere within 200 metres of a position at 31° 32.450'S, 159° 02.790'E marked as LH6 on Chart AUS 610.
- (3) In this clause, *Chart AUS 610* means the charts published under that title by the Australian Hydrographic Service on 10 November 2000.

20 Moorings

A person must not occupy or use a mooring in the marine park that is provided by the Authority except with the consent of the relevant Ministers.

Note. This clause applies despite clause 28 (1) (b) of this Regulation which provides that a person must not attach a vessel, for a period of more than 12 hours, to a mooring or other facility in a marine park that is owned or managed by the Authority.

21 Discharge from vessels

A person must not discharge ballast water, obtained by vessels from outside the marine park, within the marine park.

22 Motorised wheeled vehicles

- (1) A person must not use a motorised wheeled vehicle in any part of the marine park, otherwise than at a location designated by the Lord Howe Island Board as a jetty or vessel launching facility, except with the consent of the relevant Ministers.
- (2) This clause does not apply to police vehicles or emergency vessels.

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Division 9 Tables

Table A—Fish that may be taken from habitat protection zone for recreational purposes

Common name	Class/family	Species
Finfish (fish with fins and scales)	Class Osteichthyes	All species except those prohibited from taking by the <i>Fisheries Management (General) Regulation 2002</i>
Worms	Class Polychaeta	All species
Crabs	Order Brachyura	All species
Lobster, crayfish	Family Palinuridae	All species
Ghost shrimp, marine yabbies, nippers	Family Callinassidae	All species
Snapping shrimp	Family Alpheidae	All species
Slipper lobster, shovel nosed lobster or bug	Family Scyllaridae	All species
Prawns	Family Penaeidae	All species
Squid and octopus	Class Cephalopoda	All species
Turban shell	Family Turbinadae	All species
Black snail	Family Neritidae	<i>Nerita atramentosa</i>
Sea urchins	Class Echinoidea	<i>Centrostephanus rodgersii</i> <i>Heliocidaris tuberculata</i>
Sharks and rays	Class Chondrichthyes	All species except those prohibited from taking by the <i>Fisheries Management (General) Regulation 2002</i>

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Table B—Bag limits for species that may be taken from habitat protection zone for recreational purposes only

Common name	Species	Maximum number allowed to be taken per person per day
Double Header	<i>Coris bulbifrons</i>	1
Bluefish	<i>Girella cyanea</i>	5
Spangled Emperor	<i>Lethrinus nebulosus</i>	2
Scorpionfish, red rock cod, bucket head	<i>Scorpaena cookii</i> <i>Scorpaena cardinalis</i>	2 in total comprised of one species or a combination of both

Table C—Species that may be taken for sale from the habitat protection zone

Common name	Class/family/order	Species
Finfish (fish with fins and scales)	Class Osteichthyes	All species except those listed in Table D, and those prohibited from taking by the <i>Fisheries Management (General) Regulation 2002</i>
Sharks and rays	Class Chondrichthyes	All species except those prohibited by the <i>Fisheries Management (General) Regulation 2002</i>

Table D—Species prohibited from taking for sale

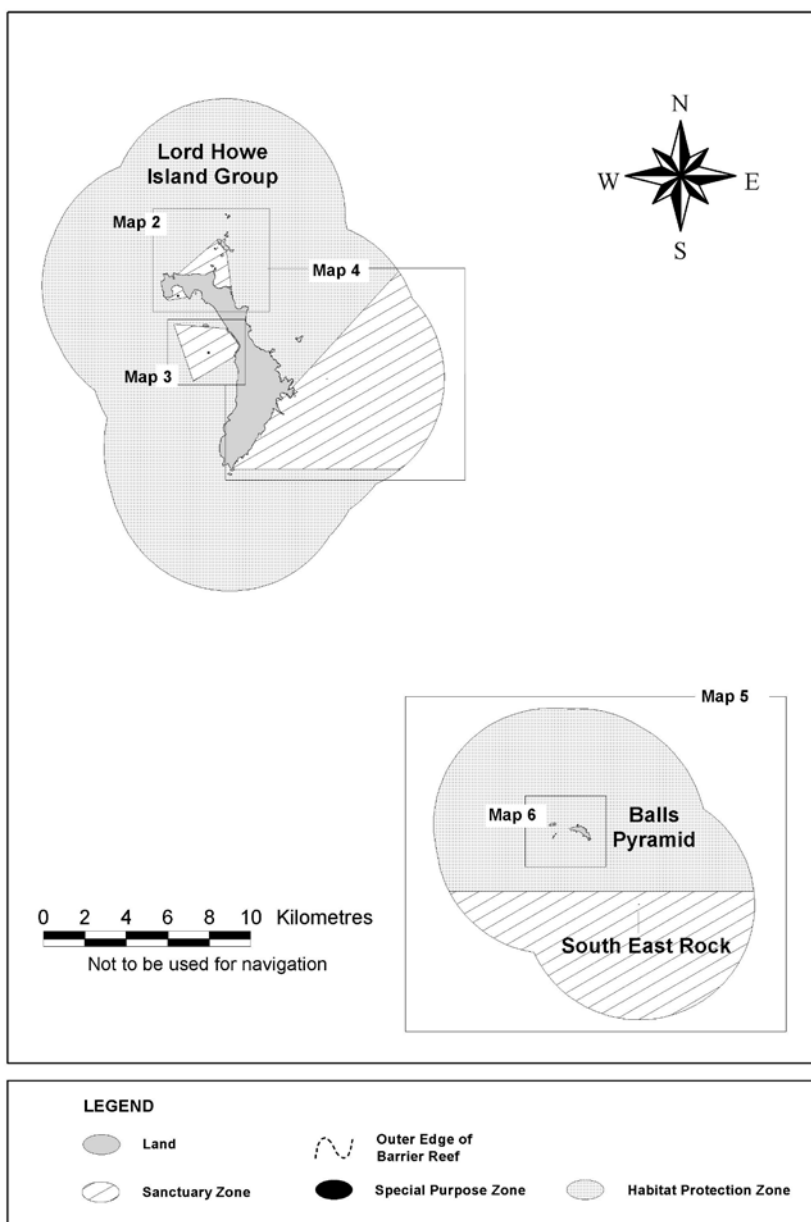
Common name	Class/family/order	Species
Double Header	Family Labridae	<i>Coris bulbifrons</i>
Bluefish	Family Girellidae	<i>Girella cyanea</i>

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Division 10 Maps

Map 1 Overview of zoning plan

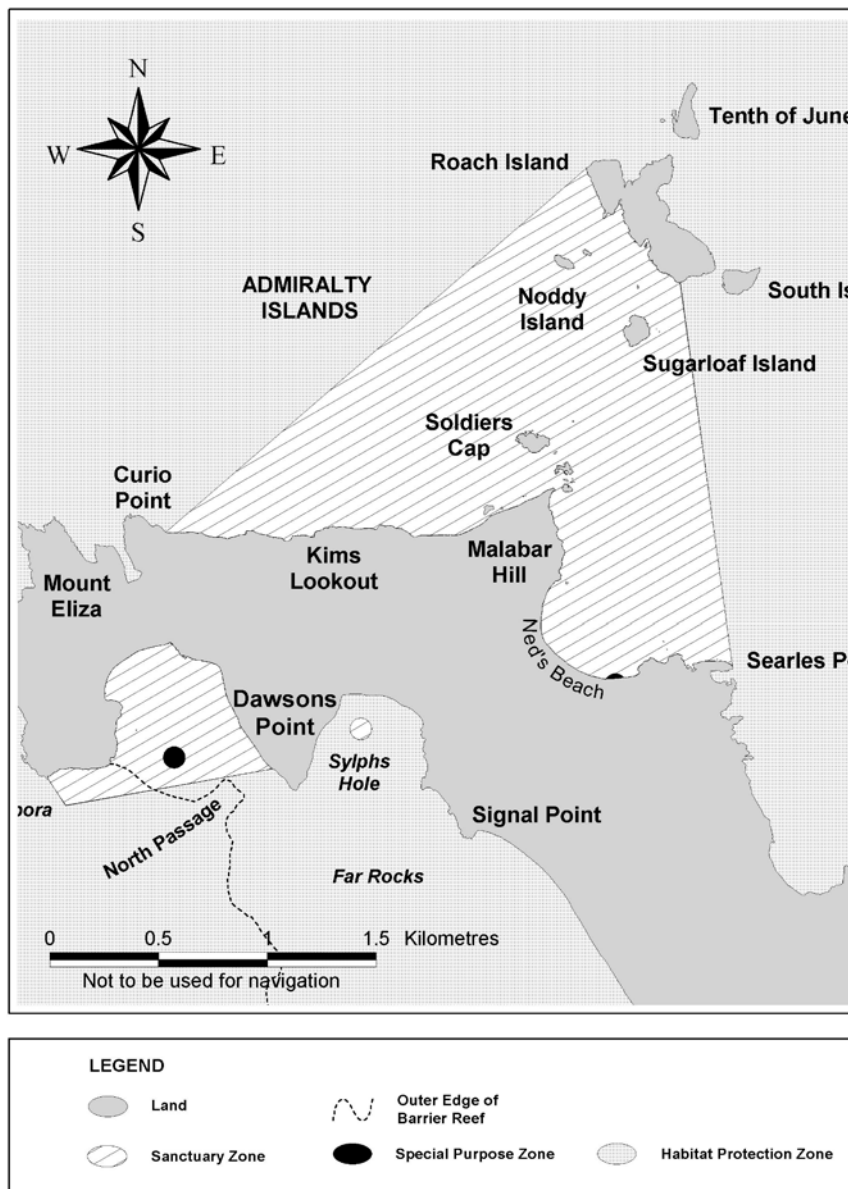


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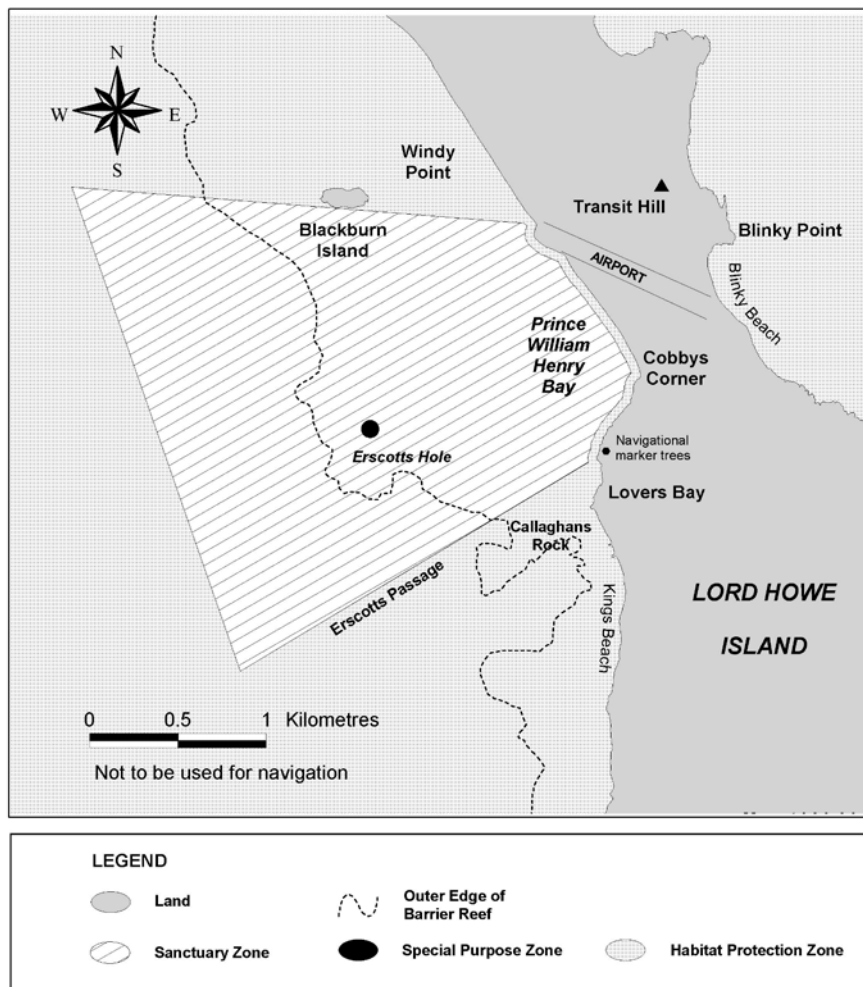
Map 2 North Bay, Admiralty Island and Neds Beach



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Map 3 Lord Howe Island Lagoon

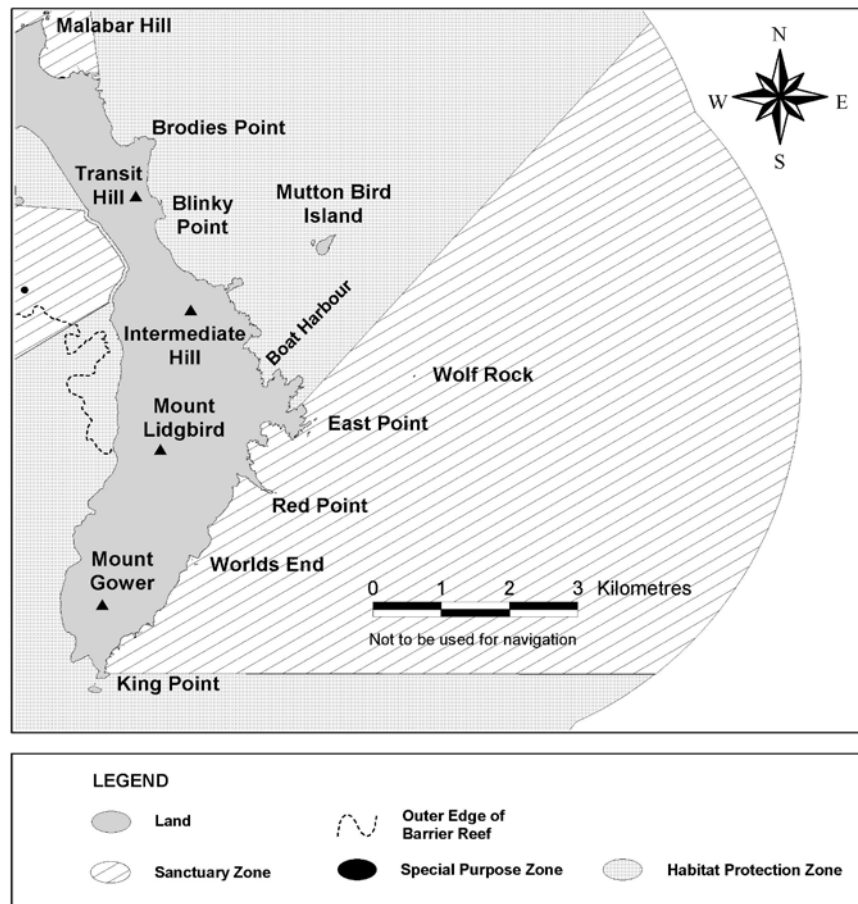


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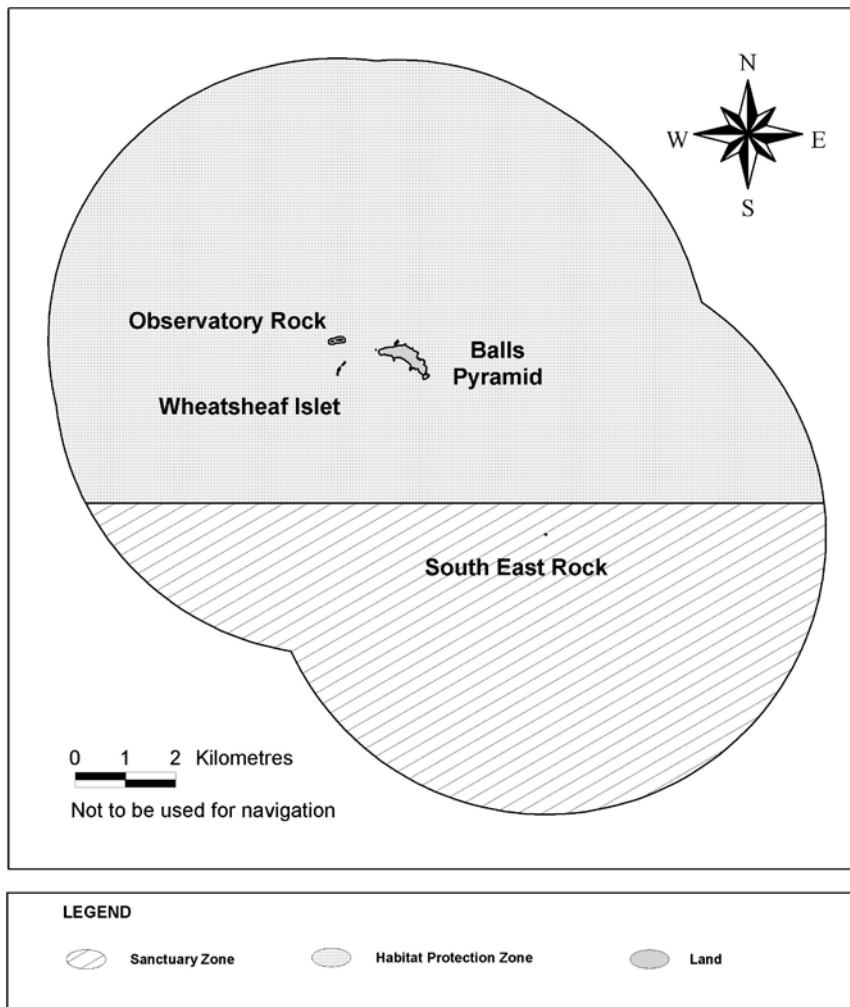
Map 4 East coast and shelf



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Map 5 Balls Pyramid section

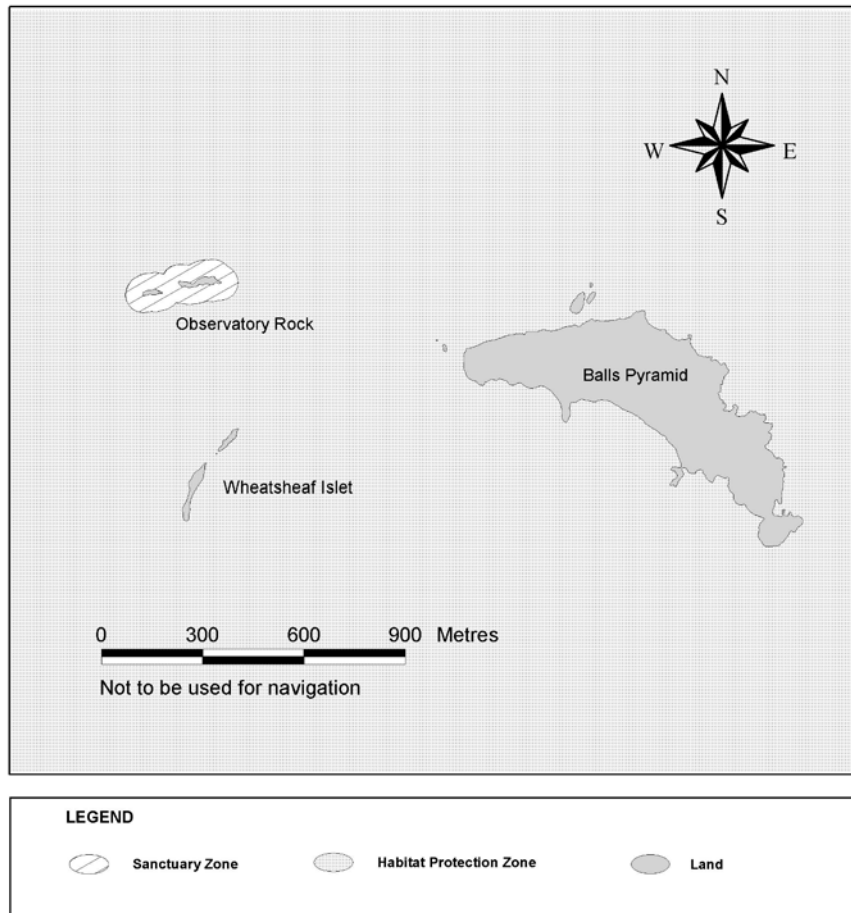


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Schedule 2

Map 6 Observatory Rock



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