

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment (Queensland Fisheries Legislation) Regulations 2021

Legislative Authority

The *Great Barrier Reef Marine Park Act 1975* (the GBRMP Act) establishes the Great Barrier Reef Marine Park Authority (the Authority) and makes provision for and in relation to the establishment, control, care and development of a Marine Park in the Great Barrier Reef Region (the Region).

Under subsection 66(1) of the GBRMP Act, the Governor-General may make regulations, not inconsistent with the GBRMP Act or with a zoning plan, prescribing all matters required or permitted by the GBRMP Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the GBRMP Act.

Background

Under long-standing arrangements between the Commonwealth and the State of Queensland, fishing activities in the Region are managed by the State of Queensland, subject to the requirements of the GBRMP Act and other Commonwealth laws. This arrangement is recognised under the Great Barrier Reef Intergovernmental Agreement 2015 (the Agreement), the objective of which is to ensure an integrated and collaborative approach by the Commonwealth and Queensland to the management of marine environments within the Great Barrier Reef World Heritage Area, so as to:

- provide for the long-term protection and conservation of the environment of the Great Barrier Reef ecosystem, including its Outstanding Universal Value and its transmission in good condition to future generations;
- allow ecologically sustainable use of the Great Barrier Reef ecosystem subject to the overarching objective of long-term protection and conservation; and
- provide for meeting Australia's international responsibilities for the Great Barrier Reef World Heritage Area under the World Heritage Convention.

Among other things, the Agreement acknowledges the ongoing commitment of both parties to *"maintaining complementarity and improving the efficiency and effectiveness of relevant Commonwealth and Queensland management arrangements, in particular: ...management of fishing activities"*.

To that end, a policy intent of laws made under the GBRMP Act, such as the *Great Barrier Reef Marine Park Zoning Plan 2003* (Zoning Plan) and the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) is to, among other things, generally aim for fisheries and Marine Park management arrangements that are complementary and

compatible. This is achieved, in part, by ensuring the Principal Regulations apply and adopt relevant Queensland fisheries laws, where they are considered to be consistent with the GBRMP Act and Zoning Plan, to regulate various fishing conduct in the Marine Park. Where appropriate, Queensland fisheries legislation is adopted in the Principal Regulations 'as in force from time to time'. In some instances, additional or different regulation is prescribed by the Principal Regulations, the Zoning Plan and the GBRMP Act.

In 2019 the Queensland Government amended its suite of fisheries laws, including repealing and re-making two instruments (the *Fisheries Regulation 2008* (Qld) and the *Fisheries (East Coast Trawl) Management Plan 2010* (Qld)) which are expressly adopted and applied as in force from time to time under various provisions of the Principal Regulations. The re-made laws were re-organised into four new instruments, being the:

- *Fisheries (General) Regulation 2019* (Qld);
- *Fisheries (Commercial Fisheries) Regulation 2019* (Qld);
- *Fisheries Declaration 2019* (Qld); and
- *Fisheries Quota Declaration 2019* (Qld).

Purpose

The primary object of the *Great Barrier Reef Marine Park (Queensland Fisheries Legislation) Regulations 2021* (the Amendment Regulations) is to amend the Principal Regulations in order to maintain the existing policy intent and protections of Marine Park values, and support the ongoing complementarity of Queensland fisheries legislation and the regulation of commercial and recreational fishing in the Marine Park.

The Amendment Regulations make minor and machinery changes to update the current references to Queensland fisheries laws in the Principal Regulations to refer to the four new Queensland fisheries instruments. To the extent possible, the updates will ensure that regulation of fishing conduct in the Marine Park under the Zoning Plan and Principal Regulations remains to be consistent with Queensland fisheries legislation. The updates to the Principal Regulations do not result in any significant policy changes, and are intended to maintain the existing protections of Marine Park values that apply in the Marine Park in relation to fishing activities.

The Amendment Regulations also make minor changes to update out-of-date references to classes of threatened species under the *Nature Conservation Act 1992* (Qld) and to correct typographical issues that have been identified in the Principal Regulations.

Documents incorporated by reference

Subsection 66(13) of the GBRMP Act authorises the Amendment Regulations to apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time (overriding section 14 of the *Legislation Act 2003*).

The Amendment Regulations incorporate the following documents by reference (which are not Commonwealth Acts or Commonwealth disallowable legislative instruments) as in force from time to time:

- *Fisheries Act 1994* (Qld), available from www.legislation.qld.gov.au;
- *Fisheries (Commercial Fisheries) Regulation 2019* (Qld), available from www.legislation.qld.gov.au;
- *Fisheries Declaration 2019* (Qld), available from www.legislation.qld.gov.au;
- *Fisheries (General) Regulation 2019* (Qld), available from www.legislation.qld.gov.au;
- International Convention for the Safety of Life at Sea- the Convention is in Australian Treaty Series 1983 No.22 ([1983] ATS 22) and could in 2021 be viewed in the Australia Treaties Library on the AustLII website (<http://www.austlii.edu.au>);
- A regulation made under the *Fisheries Act 1994* (Qld), to the extent that the regulation applies in the Marine Park, available from www.legislation.qld.gov.au; and
- A declaration made by the Chief Executive under the *Fisheries Act 1994* (Qld), to the extent that the declaration applies in the Marine Park.

Consultation

The Authority understands that the new Queensland fisheries laws, which are intended to be applied and adopted under relevant provisions of the Principal Regulations, were made following a comprehensive stakeholder consultation process and consultation with Queensland's Office of Best Practice Regulation. The outcome of the consultations by Queensland was that stakeholders were generally supportive of the reforms. Given the Amendment Regulations do not result in any significant policy changes, and are intended to maintain the existing protections of Marine Park values that apply in the Marine Park in relation to fishing activities, no further public consultation will be undertaken.

The Authority has consulted with representatives of the Queensland Department of Agriculture and Fisheries on the Amendment Regulations have indicated support for the amendments.

Regulatory Assessment

The Authority undertook preliminary regulatory assessment. Advice was received from the Office of Best Practice Regulation confirming that a regulation impact statement was not required (reference number 42834).

The Amendment Regulations are a legislative instrument for the purposes of the ***Legislation Act 2003***.

Details of the Amendment Regulations and the notes on clauses are at **Attachment A**.

Statement of Compatibility with Human Rights

A Statement of Compatibility with human rights for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Commencement

The Amendment Regulations commence in parts, with sections 1 to 4 and Schedule 1, Part 1 commencing the day after the Amendment Regulations are registered. Schedule 1, Part 2 will commence the later of the start of the day after the Amendment Regulations are registered, and the commencement of Chapter 4 of the *Fisheries Legislation Amendment Regulation 2020 (Qld)* (the FLA Regulation).

Details of the *Great Barrier Reef Marine Park Amendment (Queensland Fisheries Legislation) Regulations 2021*

Section 1 - Name

This section provides that the title of the Amendment Regulations is the *Great Barrier Reef Marine Park Amendment (Queensland Fisheries Legislation) Regulations 2021*.

Section 2 - Commencement

This section sets out the timetable for the commencement of the provisions of the Amendment Regulations. It provides that section 1 to 4 and anything in the Amendment Regulations not covered elsewhere by the table commence the day after the Amendment Regulations are registered.

Schedule 1, Part 1 commences the day after the Amendment Regulations are registered.

Schedule 1, Part 2 commences the later of the start of the day after the Amendment Regulations are registered and the commencement of Chapter 4 of the *Fisheries Legislation Amendment Regulation 2020 (Qld)* (the FLA Regulation). These provisions do not commence at all if the FLA Regulation does not commence.

The commencement date for Schedule 1, Part 2 is intended to align with the commencement of amendments to the *Fisheries (Commercial Fisheries) Regulation 2019 (Qld)* which are due to commence on 1 September 2021.

Section 3 - Authority

This section provides that the Amendment Regulations are made under the *Great Barrier Reef Marine Park Act 1975* (the GBRMP Act).

Section 4 - Schedules

Item 4 provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Great Barrier Reef Marine Park Regulations 2019

Items [1] to [3] - Subsection 5(1) (Definitions)

Item [1] inserts two new definitions in subsection 5(1) of the Principal Regulations. These are ‘Commercial Fisheries Regulation’ and ‘Fisheries Declaration’. Commercial Fisheries Regulation now means the *Fisheries (Commercial Fisheries) Regulation 2019* (Qld) and the Fisheries Declaration now means the *Fisheries Declaration 2019* (Qld). Both instruments are captured ‘as in force from time to time.’

Item [2] repeals the current definition of ‘Fisheries Regulation’ which, following the Queensland legislative reforms, is a now redundant reference to the *Fisheries Regulations 2008* (Qld).

Item [3] inserts a new definition of ‘General Fisheries Regulation’. The General Fisheries Regulation now means the *Fisheries (General) Regulation 2019* (Qld). It is captured ‘as in force from time to time.’

The *Fisheries (General) Regulation 2019* (Qld) (General Fisheries Regulation) and the *Fisheries (Commercial Fisheries) Regulation 2019* (Qld) (Commercial Fisheries Regulation) together replace the *Fisheries Regulations 2008* (Qld) with the aim of delivering a more modern regulatory approach.

The *Fisheries Declaration 2019* (Qld) (Fisheries Declaration) is intended to transition all existing fisheries declarations (other than quota declarations) that were previously contained within the repealed *Fisheries Regulation 2008* (Qld) and the repealed *Fisheries (East Coast Trawl) Management Plan 2019* (Qld) into one fisheries declaration made by the Chief Executive under the *Fisheries Act 1994* (Qld). This will ensure the continuation of all existing fisheries declarations, as the *Fisheries Act 1994* (Qld) prevents any further making of fisheries declarations by regulation or by a management plan. Instead of fisheries declarations being approved by the Queensland Governor in Council, they are made by the Chief Executive of the Department of Agriculture and Fisheries. The Principal Regulations were amended in 2019 to prepare for this change.

The updates made by Items [1] to [3], have a flow on effect to the extent that the Amendment Regulations remove redundant references to the repealed *Fisheries Regulation 2008* (Qld) and insert new references to the General Fisheries Regulation, Commercial Fisheries Regulation and Fisheries Declaration. This is explained further in relation to Items [5], [13], [15], [22] to [34], and [41] below.

Item [4] - Subsection 5(1) (definition of *hazardous goods*)

In 2019 the *Great Barrier Reef Marine Park Regulations 1983* were repealed and remade in substantially the same form by the Principal Regulations. During the remake, paragraph (b)

of the old definition of ‘hazardous goods’ contained in the 1983 Regulations was inadvertently omitted from subsection 5(1) of the Principal Regulations. Item [4] of the Amendment Regulations is intended to rectify this minor drafting error, and ensure the original policy intent of the definition is achieved.

The substituted definition now includes both paragraph (a) and (b) so that the definition of hazardous goods additionally “*includes noxious liquid substances within the meaning of Part III of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.*”

The definition is relevant to section 193 of the Principal Regulations, which prescribes information that must be contained in an application to the Minister for a compulsory pilotage exemption for the purposes of subsection 59F(2) of the GBRMP Act. Section 193 prescribes, among other things, that the application must contain details of cargo on the ship, including, if hazardous goods are carried, the types and quantities of the hazardous goods.

Item [5] - Subsection 5(1) (definition of “‘N11’ fish”)

Prior to the Amendment Regulations “‘N11’ fish” was defined in subsection 5(1) of the Principal Regulations to have the same meaning as in the (now repealed) *Fisheries Regulation 2008* (Qld). The ‘N11’ fishery is a bait-fish fishery. When the definition for “‘N11’ fish” from the repealed *Fisheries Regulation 2008* (Qld) was applied to section 15 (Bait netting—limitations on netting) of the Principal Regulations it supported the desired intent that fishers may only undertake bait netting. Item [5] of the Amendment Regulations updates the definition of “‘N11’ fish” in subsection 5(1) of the Principal Regulations by omitting the reference to the (now repealed) *Fisheries Regulation 2008* (Qld) and substituting this with a reference to the new Commercial Fisheries Regulation.

As at the date of commencement of the Amendment Regulations, the definition of “‘N11’ fish” was located in Schedule 11 of the Commercial Fisheries Regulation, and provided that “‘N11’ fish means fish that may, under Schedule 4, be taken in the N11 Fishery”.

The substance of the definition for the purposes of the Principal Regulations is unchanged.

Item [6] - Paragraph 10(b), and Item [16] - Paragraph 30(c) (definitions of ‘protected species’)

In 2019 the *Nature Conservation Act 1994* (Qld) (NC Act) was amended to address inconsistencies in the different Commonwealth, state and territory government legislative frameworks for assessing and listing threatened species by adopting a common assessment method established by Commonwealth, state and territory governments for assessing and listing nationally threatened species. The amendments achieved this by amending section 71 of the NC Act to include International Union for Conservation of Nature classes of wildlife, which are part of the common assessment method. This involved splitting the pre-existing ‘endangered wildlife’ category into two categories: ‘endangered’ and ‘critically endangered’; and including a new category: ‘extinct wildlife.’ Necessary consequential amendments were also required to be made elsewhere in the NC Act to the criteria for the

existing and new wildlife classes, and to other Queensland legislation referring to the wildlife classes.

The Amendment Regulations update the Principal Regulations where they refer to the classes of wildlife in the NC Act to address the fact that the previous class ‘endangered wildlife’ under the NC Act has now been split into ‘endangered’ and ‘critically endangered’ wildlife.

Item [6] of the Amendment Regulations adds ‘critically endangered wildlife’ to paragraph 10(b) of the Principal Regulations (Protected species-declaration for the purposes of the GBRMP Act). Item [16] of the Amendment Regulations makes a similar update to paragraph 30(c) of the Principal Regulations (Protected Species-declaration for the purposes of the Zoning Plan). The intended effect of these amendments is to ensure the definitions of protected species refer to the two new categories, ‘endangered wildlife’ and ‘critically endangered wildlife’ under the NC Act. The amendments are not intended to result in any policy change to the definitions.

Items [7] to [11] - Section 15 (Bait netting-limitations on netting)

The purpose of section 15 of the Principal Regulations is to declare nets and the limitations on netting that apply for the purposes of the definition of ‘bait netting’ in the Zoning Plan. While the Queensland fisheries legislation does not regulate ‘bait netting’ per se, section 15 of the Principal Regulations adopts specific aspects of Queensland fisheries legislation that the Authority considers appropriately regulate the conduct of ‘bait netting’ in the Marine Park. To that end, section 15 prescribes nets and limitations that are considered to be lower risk smaller size mesh (baitfish) netting activities, and which are intended to be regulated separately to large-mesh ‘netting’ in the Marine Park.

Items [7] to [11] of the Amendment Regulations replace the references in section 15 of the Principal Regulations to provisions of the (now repealed) *Fisheries Regulation 2008* (Qld) with equivalent references to provisions in the new Fisheries Declaration and Commercial Fisheries Regulation.

For ease of reference, the following table sets out the provisions of the Repealed Fisheries Regulation which, prior to the Amendment Regulations, were expressly referred to in section 15, and notes the new corresponding provisions of the current Queensland fisheries instruments that are now referred to in section 15:

Provision of Principal Regulations	Repealed <i>Fisheries Regulation 2008</i> (Qld) reference	Corresponding provision of current Queensland fisheries instrument
Subparagraph 15(2)(a)(i)	Section 187A	Section 154 of the Fisheries Declaration
Subparagraph 15(2)(a)(ii)	Section 187B	Section 155 of the Fisheries Declaration
Subparagraph	Section 187C	Section 156 of the

15(2)(a)(iii)		Fisheries Declaration
Subparagraph 15(2)(b)(i)	Subsection 475(1)	Subsection 42(1) of Schedule 4 to the Commercial Fisheries Regulation
Subparagraph 15(2)(b)(ii)	Section 532	Section 119 of Schedule 4 to the Commercial Fisheries Regulation
Subparagraph 15(2)(b)(iii)	Not applicable	Section 120 of Schedule 4 to the Commercial Fisheries Regulation
Subparagraph 15(3)(b)(iv) (previously this provision was subparagraph 15(3)(b)(iii))	Section 533	Section 121 of Schedule 4 to the Commercial Fisheries Regulation
Paragraph 15(3)(a)	Section 179	Section 138 of the Fisheries Declaration
Subparagraph 15(3)(b)(i)	Section 179	Section 138 of the Fisheries Declaration
	Section 181	Section 140 of the Fisheries Declaration
	Subsection 472(6)	Subsection 38(6) of Schedule 4 to the Commercial Fisheries Regulation
	Subsection 472(7)	Subsection 38(7) of Schedule 4 to the Commercial Fisheries Regulation
	Subsection 475(2)	Subsection 42(2) of Schedule 4 to the Commercial Fisheries Regulation
Subparagraph 15(3)(b)(ii)	Subsection 247(5)	Section 38 of Chapter 3 of the Commercial Fisheries Regulation
Subparagraph 15(3)(b)(iii)	Not applicable –new provision for using a scoop net to take ‘N11’ fish	Section 38 of Chapter 3 of the Commercial Fisheries Regulation
Subparagraph 15(3)(b)(iv) (previously subparagraph 15(3)(b)(iii))	Section 179	Section 138 of the Fisheries Declaration
	Section 181	Section 140 of the Fisheries Declaration
	section 530	Section 118 of Schedule 4 to the Commercial

		Fisheries Regulation
	Section 533	Section 121 of Schedule 4 to the Commercial Fisheries Regulation
	section 533B	Section 124 of Schedule 4 to the Commercial Fisheries Regulation

Updates relating to scoop nets

The updates do not result in any significant policy changes however it is intended that there be a minor policy change in section 15 of the Principal Regulations.

The Commercial Fisheries Regulation now permits the use of scoop nets (in addition to cast nets and mesh nets) to take fish in the eastern N11 area, and prohibits use of a power assisted device in the eastern N11 area. Accordingly, the intention is that scoop nets now be referred to in paragraphs 15(2)(b) and (3)(b) of the Principal Regulations in circumstances where these types of nets were not referred to previously.

To that end, Item [9] of the Amendment Regulations will ensure that, for a commercial fisher, for the purposes of the definition of bait netting in the Zoning Plan, a scoop net must comply with the size, measurement and other physical requirements in section 120 of Schedule 4 to the Commercial Fisheries Regulation. As at the date of commencement of the Amendment Regulations, section 120 of the Commercial Fisheries Regulations provided that *"A scoop net may be used only if the net-(a) is not more than 2m in any dimension; and (b) has a mesh size of at least 25mm."*

Item [11] of the Amendment Regulations will ensure that a commercial fisher, while using a scoop net for taking 'N11' fish, must comply with the licence condition about selling N11 fish in section 38 of the Commercial Fisheries Regulation. This requirement already applied to cast nets and mesh nets (other than seine nets) prior to the commencement of the Amendment Regulations. As at the date of commencement of the Amendment Regulations, the licence condition in section 38 of the Commercial Fisheries Regulation was that *"If a primary boat or tender boat for a primary boat is used to take N11 fish under section 32(5), the N11 fish cannot be sold under the licence unless the fishery symbol 'N11' is written on the licence."*

Item [12] - Paragraph 17(1)(d) (Fishing or collecting-limitations)

Section 17 of the Principal Regulations prescribes certain limitations for the purposes of the definition of fishing or collecting in the Zoning Plan. Paragraph 17(1)(c) of the Principal Regulations requires that *"no more than 5 specimens of an animal of a species specified"* in either Part 2 of the table in subsection 17(2), or a declaration as in force from time to time under paragraph 17(3)(b), may be taken or possessed. Prior to the commencement of the Amendment Regulations, subparagraph 17(1)(d)(i) effectively required that no more than the number of specimens authorised by Queensland fisheries legislation be taken or possessed.

The wording of these provisions has created uncertainty in cases where the relevant Queensland fisheries legislation allows a greater number of species to be taken than that specified in paragraph 17(1)(c). To address this issue, Item [12] of the Amendment Regulations clarifies that in the event of any inconsistency with paragraph 17(1)(d), paragraphs 17(1)(a), (b) and (c) of the Principal Regulations should always prevail. This has the benefit of providing certainty in cases where the relevant Queensland fisheries legislation allows a greater number of species to be taken than that specified in paragraph 17(1)(c).

Item [13] - Section 18 (Harvest fisheries-declaration of fisheries)

The purpose of section 18 of the Principal Regulations is to declare certain fisheries that are described in Queensland fisheries legislation to be ‘harvest fisheries’ for the purposes of the Zoning Plan. Under the Zoning Plan, taking fish in accordance with a harvest fishery (as declared under the Principal Regulations) is allowed in some zones with the Authority’s written permission.

Section 18 is intended to declare the applicable harvest fisheries, while at the same time ensuring consistency with Queensland government regulation of fishing. Item [13] of the Amendment Regulations replaces references in section 18 of the Principal Regulations to the provisions of the repealed *Fisheries Regulation 2008* (Qld) with the corresponding provisions of the new Commercial Fisheries Regulation as in force from time to time.

Accordingly, the reference in section 18 of the Principal Regulations to fisheries described in “*Chapters 7 and 11 of the Fisheries Regulation*” is omitted and the section is updated to refer to the fisheries described in “*Parts 1, 2, 3, 5, 8, 11, 12, 13 and 14 of Schedule 1 to the Commercial Fisheries Regulation and Part 1 of Schedule 8 to the Commercial Fisheries Regulation*”. This update maintains the intent of section 18 of the Principal Regulations and does not result in any policy changes.

On 1 September 2021 amendments to the Commercial Fisheries Regulation are due to commence which will necessitate a further update to section 18 of the Principal Regulations in order to reflect changes to the numbering of the relevant Schedules in the Commercial Fisheries Regulations. This is discussed below in relation to Part 2, Item [42] of the Amendment Regulations (Contingent amendments).

Item [14] - Paragraph 27(1)(b), and Item [15] - Subsection 27(2) (Netting-limitations)

The purpose of section 27 of the Principal Regulations is to declare, for the purposes of the definition of ‘netting’ in the Zoning Plan, the conditions or limitations that are prescribed for the purposes of that definition. Additional restrictions in section 27, over and above what is required by Queensland fisheries legislation, are targeted to meet concerns about environmental sustainability and the conservation of species, and apply in Special Management Areas.

Item [14] of the Amendment Regulations replaces the reference to the repealed *Fisheries Regulation 2008* (Qld) in paragraph 27(1)(b) of the Principal Regulations with a reference to

the 'Queensland fisheries legislation'. Additionally, Item [15] replaces the reference contained in section 27(2) of the Principal Regulations to "section 475 or Part 5 of Chapter 9 of the [Fisheries Regulation 2008 (Qld)]" with references to 'section 42' and 'Part 7 of Schedule 4' of the Commercial Fisheries Regulation. The updates made by Items [14] and [15] of the Amendment Regulations are not intended to result in any policy changes.

As at the date of commencement of the Amendment Regulations, the relevant provisions of Queensland fisheries legislation relating to the use of nets in commercial net fisheries that apply in the Marine Park, and are intended to be 'picked up' by section 27 of the Principal Regulations, were contained in section 4 of, together with Parts 2, 3, 4 and 7 of Schedule 4 to, the Commercial Fisheries Regulation.

Refer to the below explanation of Items [30] to [34] of the Amendment Regulations, which amend subsections 44(3), (5) and (6) of the Principal Regulations, and which have a flow on effect on sections 27(1)(a), (e) and (f) of the Principal Regulations to the extent those provisions refer to section 44.

Items [17] to [19] – Section 30 (Protected species-declaration for purposes of Zoning Plan)

Paragraph 5.3 of the Zoning Plan regulates entry into zones for the purpose of taking protected species. The Zoning Plan defines 'protected species' as meaning a species declared for the purposes of this definition in the Principal Regulations, and subject to any limitation prescribed in the Principal Regulations.

The table at the end of paragraph 30(e) of the Principal Regulations lists declared species for the purposes of the definition of 'protected species' in the Zoning Plan. Item [17] of the Amendment Regulations makes a minor typographical amendment to the table at the end of paragraph 30(e) of the Principal Regulations by omitting the reference to 'carcharinus' and substituting this with a reference to 'carcharhinus', being the correct spelling of the genus for silky shark.

Pursuant to paragraph 30(b) of the Principal Regulations, a listed migratory species within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is declared for the purposes of the definition of 'protected species' in the Zoning Plan. In October 2020, oceanic whitetip shark (*Carcharhinus longimanus*) became a listed migratory species within the meaning of the EPBC Act. While the listing of this species automatically brings it within the definition of 'protected species' in the Zoning Plan (pursuant to section 30(b) of the Principal Regulations), it is the Authority's intention that the table at the end of paragraph 30(e) of the Principal Regulations be updated for completeness. Item [18] of the Amendment Regulations achieves this intent by inserting new table item 12A, which refers to oceanic whitetip shark (*Carcharhinus longimanus*).

Item [19] of the Amendment Regulations makes a minor typographical amendment to the table at the end of paragraph 30(e) so that table item 23 refers to the complete common name 'Scalloped hammerhead shark' (rather than just 'scalloped hammerhead') for *Sphyrna lewini*.

Item [20] - Paragraphs 31(b) and (c) (Queensland fisheries legislation)

A general policy intent of the Principal Regulations is that fisheries management arrangements in the Marine Park remain complementary to and compatible with those that apply under Queensland legislation, and in this regard that regulation of fishing conduct in the Marine Park should, to the extent possible (and subject to exceptions), be consistent with Queensland fisheries legislation as in force from time to time.

The purpose of section 31 of the Principal Regulations is to prescribe the relevant laws of Queensland, as in force from time to time, for the purposes of the definition of 'Queensland fisheries legislation' in the Zoning Plan and, due to the definition of 'Queensland fisheries legislation' in subsection 5(1), in the Principal Regulations.

Prior to the commencement of the Amendment Regulations, the effect of section 31 of the Principal Regulations (when read in conjunction with the definition of 'Queensland fisheries legislation' in subsection 5(1)) was to prescribe the following laws as in force from time to time for the purposes of the definition of 'Queensland fisheries legislation' in the Zoning Plan and in the Principal Regulations:

- (a) The *Fisheries Act 1994* (Qld);
- (b) The *Fisheries Regulation 2008* (Qld);
- (c) A fishery management plan made under paragraph 32(1)(a) of the *Fisheries Act 1994* (Qld), to the extent that the plan applies in the Marine Park; and
- (d) A declaration made by the Chief Executive under the *Fisheries Act 1994* (Qld), to the extent that the declaration applies in the Marine Park.

In 2019 the *Fisheries Regulation 2008* (Qld) and the *Fisheries (East Coast Trawl) Management Plan 2010* (Qld) were both repealed and replaced with four new legislative instruments, comprising two regulations and two declarations. Three of those new instruments have subsequently been amended. Further, in 2019 the *Fisheries Act 1994* (Qld) was amended to omit provisions for making management plans. Consequently, this has given rise to the need for updates to section 31 of the Principal Regulations to remove the references to the repealed *Fisheries Regulation 2008* (Qld), and to fishery management plans, and replace these with up-to-date references.

The Amendment Regulations address this need, while moving away from prescribing each of the specific instruments that have been made under the *Fisheries Act 1994* (Qld), and instead prescribes certain classes of instruments. This is intended to better 'future-proof' the Principal Regulations.

Item [20] of the Amendment Regulations repeals paragraphs 31(b) and (c) of the Principal Regulations (which referred to the repealed *Fisheries Regulation 2008* (Qld), and to the redundant fishery management plans) and inserts a new paragraph 31(b). Rather than referring to specific Queensland regulations, new paragraph 31(b) refers to "a regulation made under [the *Fisheries Act 1994* (Qld)], to the extent that the Regulation applies in the Marine Park." The intention is that this would include the General Fisheries Regulation and the Commercial Fisheries Regulation, but also potentially any other regulation made under

the Fisheries Act that applies in the Marine Park, including any regulation that may be amended or remade in future.

The *Fisheries Act 1994* (Qld) and declarations made under that Act, as in force from time to time, continue to be expressly prescribed under existing paragraphs 31(a) and (d) of the Principal Regulations. It is intended paragraph 31(d) will capture both the new Fisheries Declaration and the *Fisheries Quota Declaration 2019* (Qld).

The amendments to section 31 have the effect of updating the references to ‘Queensland fisheries legislation’ in the following provisions of

- the Principal Regulations:

Section 5(1)- Definitions: paragraph (b) of the definition of ‘authority’, paragraph (a)(i) of the definition of ‘minor research aid’, and the definition of ‘Queensland fisheries legislation’;

Sections 14(32), 17(1)(d), 20(2)(d) and (e), 22(b), 23(d), 35(c), 56(b), 106(1)(a)(ii), (iii) and (iv).

- the Zoning Plan:

Section 1.8, and the definitions of ‘harvest fishery’ and ‘Queensland fisheries legislation’ under section 1.5 read together with the Dictionary to the Zoning Plan.

As at the date of commencement of the Amendment Regulations, the relevant Queensland laws that were intended to be captured in relation to each reference to ‘Queensland fisheries legislation’ in the Principal Regulations included (but were not necessarily limited to) the following:

Provision of Principal Regulations	Queensland fisheries laws (as in force from time to time) that are intended to be applied
Paragraph (b) of the definition of ‘authority’ under section 5	Fisheries Act, s4, together with the definition of ‘authority’ under Schedule 1, and s49
Paragraph (a)(i) of the definition of ‘minor research aid’ under s5	General Fisheries Regulation- subsection 7(2)
Definition of ‘Queensland fisheries legislation’ under s5	Laws prescribed under s31 of the Principal Regulations
Subsection 14(2)	Commercial Fisheries Regulation, s 4 and Parts 1-3, 5, 8, and 11-15 of Schedule 7A
Paragraph 17(1)(d)	Laws prescribed under s31 of the Principal Regulations
Paragraphs 20(2)(d) and (e)	Fisheries Act- ss 8,12, 82 and 123
Paragraph 22(b)	General Fisheries Regulation- paragraph

	7(2)(a) and section 8, Part 4 of Schedule 10 Fisheries Declaration- s50
Paragraph 23(d) and paragraph 35(c)	Fisheries Declaration- ss152, 153, 157, 161, 163, 164 and 166 Size, possession limits etc for various crab species are covered in provisions including Parts 2 and 3 of Chapter 3, together with Parts 1 and 2 of Schedule 2 Commercial Fisheries Regulation- Schedule 7
Paragraph 27(1)(b)	Laws prescribed under s31 of the Principal Regulations
Section 36	Laws prescribed under s31 of the Principal Regulations
Paragraph 56(b)	General Fisheries Regulation- s16 and Parts 5 and 6 of Schedule 7 Commercial Fisheries Regulation- see section 4, together with Schedule 2; Part 2 of Schedule 3; and Parts 2,3,4 and 7 of Schedule 4 Fisheries Declaration- see Chapter 3, and Parts 1 and 2 of Schedule 2
Paragraph 106(1)(a)(ii)	Fisheries Act- s4, together with the definition of 'authority' under Schedule 1; and s49 General Fisheries Regulation- sections 24 and 26
Paragraph 106(1)(a)(iii)	Commercial Fisheries Regulation – see Parts 4 (Conditions for particular licences), 5 (Use of BRDs) and 6 (Use of TEDs) of Schedule 2 (East coast trawl fishery).
Paragraph 106(1)(a)(iv)	Fisheries Act- s80 General Fisheries Regulation- see Part 1 (vessel tracking) of Chapter 4 (Matters prescribed for particular offences under the Act)
	Zoning Plan
Section 1.8	Laws prescribed under s31 of the

	Principal Regulations
Section 1.5 together with the definition of 'harvest fishery' in the Dictionary	Commercial Fisheries Regulation- s4, together with Parts 1-3, 5, 8 and 11-14 of Schedule 1, and Part 1 of Schedule 8
Section 1.5 together with the definition of 'Queensland fisheries legislation' in the Dictionary	Laws prescribed under s31 of the Principal Regulations

Item [21] - Section 36 (Trawling-limitations)

The purpose of section 36 of the Principal Regulations is to prescribe limitations for the purposes of the definition of 'trawling' in the Zoning Plan. Prior to the Amendment Regulations, section 36 prescribed that specified laws must be complied with when trawling; namely, the *Fisheries Regulation 2008* (Qld) and the *Fisheries (East Coast Trawl) Management Plan 2010* (Qld). These have both been recently repealed and the corresponding provisions regulating trawling have been re-made under three separate instruments.

It is intended that the limitation prescribed for the purpose of the definition of 'trawling' in the Zoning Plan is that 'Queensland fisheries legislation' relating to trawling, as in force from time to time, is complied with. To give effect to this intent, Item [23] of the Amendment Regulations omits references in section 36 of the Principal Regulations to the repealed *Fisheries Regulation 2008* (Qld) and the repealed *Fisheries (East Coast Trawl) Management Plan 2010* (Qld) and substitutes these with a reference to "the requirements of the *Queensland fisheries legislation relating to trawling*".

Paragraph 36(1)(a) of the Principal Regulations does not prescribe specific instruments or provisions so as to better 'future-proof' the Principal Regulations. Despite this, the intention is that the broad reference to "the requirements of *Queensland fisheries legislation relating to trawling*" will ensure that several aspects of Queensland's fisheries laws which apply to fishers broadly, and not only to fishers conducting trawling in the Marine Park, continue to be required to be complied with for the purpose of section 36 of the Principal Regulations.

Items [22] to [34] - Section 44 (Species Conservation (Dugong Protection) SMAs)

Special Management Areas (SMAs) provide a responsive and flexible approach to implementing appropriate management strategies at various sites in the Marine Park. SMAs are designated under the provisions of Division 4.2 of the Zoning Plan and prescribed in the Principal Regulations. They are an additional layer of management on top of zoning so that the SMAs within a zone have specific rules applying to them.

In response to declines observed in the urban coast dugong population, since 1998 the State of Queensland has restricted or prohibited net fishing activities in significant dugong habitats designated under Queensland fisheries legislation as Dugong Protection Areas (DPAs).

To provide complementary approaches for dugong conservation in the Marine Park, the Queensland DPA provisions are reflected through the designation of a series of Species Conservation (Dugong Protection) Special Management Areas (SMAs) under Division 4.2 of the Zoning Plan together with section 44 of the Principal Regulations, to the extent to which those DPAs are in the Marine Park. Additionally, section 44 (and section 27, as discussed below in relation to Item [24]) contains restrictions that are over and above what is required by Queensland fisheries laws. These additional restrictions in SMAs are targeted to meet concerns about environmental sustainability and conservation of species.

Section 44 of the Principal Regulations is amended by Items [22] to [34] of the Amendment Regulations to update references to provisions of Queensland fisheries laws that have been repealed and remade in various new instruments. The references are intended to apply as in force from time to time which maintains the status quo. There are no policy changes as a result of these updates.

The following table sets out the provisions of the repealed *Fisheries Regulation 2008* (Qld) which, prior to the commencement of the Amendment Regulations, were expressly referred to in section 44, and notes the corresponding provisions of the relevant current Queensland fisheries instruments which are now intended to apply.

Provision of Principal Regulations	Repealed <i>Fisheries Regulation 2008</i> (Qld) reference	Corresponding provision/s of current Queensland fisheries instrument
Subsection 44(2)	Chapter 2	Chapter 2 (Regulated waters declarations) of the Fisheries Declaration
Column 2 of item 1 of the table in subsection 44(2)	Section 114	Division 5 (Hinchinbrook Island (dugong protection area)), Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration
Column 2 of item 2 of the table in subsection 44(2)	Division 3 of Part 12	Division 7 (Other particular dugong protection areas), Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration
Column 2 of item 3 of the table in subsection 44(2)	Sections 116 and 116A	Division 6 (Particular dugong protection areas), Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration

Column 2 of item 4 of the table in subsection 44(2)	Section 111	Division 4 (Upstart Bay (greater dugong protection area)) Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration
Column 2 of item 5 of the table in subsection 44(2)	Section 110	Division 3 (Shoalwater Bay (dugong protection area)) Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration
Column 2 of item 6 of the table in subsection 44(2)	Section 109	Division 2 (Port Clinton (greater dugong protection area)) Part 11 (Declarations about using particular nets in dugong protected regulated waters) of the Fisheries Declaration
Paragraph 44(3)(b)	Section 121	Section 84 of the Fisheries Declaration
Paragraph 44(5)(a)(ii)	Paragraphs 120A(c), (d), (e) and (f)	Subsections 83(c), (d), (e) and (f) of the Fisheries Declaration
Note 1 to subsection 44(5)	Definition of <i>mesh net</i> in the Fisheries Regulation	Definition of <i>mesh net</i> in the General Fisheries Regulation
Paragraph 44(6)(e)	Subsection 472(7)	Subsection 38(7) of Schedule 4 (Commercial net fisheries) to the Commercial Fisheries Regulation
Note to subsection 44(6)	Definition of <i>mesh net</i> in the Fisheries Regulation	Definition of <i>mesh net</i> in the General Fisheries Regulation

Item [35] - Paragraph 103(f) (Mandatory considerations in deciding whether to grant permission)

Some commercial and non-commercial activities and operations occurring in the Marine Park require a permission. Permissions are issued by the Authority. The permission system contains the legislated methods of regulating activities that require permission or accreditation at law.

Section 103 of the Principal Regulations sets out mandatory considerations which the Authority must consider in deciding whether to grant a permission, and whether or not to impose conditions on the permission. Specifically paragraph 103(f) provides that the

Authority must consider any written comments received under Division 4 of the Principal Regulations in connection with the application.

The reference to Division 4 in current paragraph 103(f) is incorrect and should instead be a reference to Division 3. Item [35] of the Amendment Regulations corrects this minor typographical error.

Items [36] and [37] - Subparagraphs 106(1)(a)(ii) and (iv) (limits on granting permissions to take leader prawn broodstock in Habitat Protection Zone in Mission Beach Leader Prawn Broodstock Capture Area)

The purpose of section 106 of the Principal Regulations is to limit the circumstances in which the Authority may grant a permission to take leader prawn broodstock in the Habitat Protection Zone in the Mission Beach Leader Prawn Broodstock Capture Area (MBLPBCA).

One precondition for the granting of these types of permissions is that, pursuant to subparagraph 106(1)(a)(ii) of the Principal Regulations, the person applying for the permission must be the holder of a particular type of licence under Queensland fisheries legislation. Prior to the commencement of the Amendment Regulations, subparagraph 106(1)(a)(ii) of the Principal Regulations provided that the type of licence required to be held was *“a current commercial fishing boat licence (T1 endorsement) under Queensland fisheries legislation.”* This wording is no longer appropriate as it is not reflective of the current terminology used in Queensland fisheries legislation. Item [36] of the Amendment Regulations therefore repeals and substitutes the out-of-date wording in subparagraph 106(1)(a)(ii), so that the type of licence now required to be held is *“a primary commercial fishing licence under the Queensland fisheries legislation that authorises trawling in the Mission Beach Leader Prawn Broodstock Capture Area.”* The new wording of subparagraph 106(1)(a)(ii) is reflective of the original policy intent of the provision and is not intended to result in any changes to the type of licence that is required to be held.

Another precondition for the granting of permissions to take leader prawn broodstock in the MBLPBCA is that, pursuant to subparagraph 106(1)(a)(iv) of the Principal Regulations, the person applying for the permission must demonstrate compliance with certain requirements under Queensland fisheries legislation relating to vessel tracking systems. Prior to the commencement of the Amendment Regulations, subparagraph 106(1)(a)(iv) of the Principal Regulations required the applicant to *“demonstrate compliance with the requirements of Queensland fisheries legislation relating to the maintenance and use of vessel monitoring systems.”* This wording is no longer appropriate as the corresponding phrase that is presently used in Queensland fisheries legislation is ‘vessel tracking equipment’ (not ‘vessel monitoring systems’). Accordingly, Item [37] repeals and substitutes the out-of-date wording in subparagraph 106(1)(a)(iv), so that the applicant must now *“demonstrate compliance with the requirements of Queensland fisheries legislation relating to vessel tracking equipment.”* This amendment is not intended to change the original policy intent of subparagraph 106(1)(a)(iv).

Item [38] - Paragraph 119(1)(b) (Transfer of permissions and changes in beneficial ownership)

Prior to the commencement of the Amendment Regulations subsection 119(1) of the Principal Regulations provided that the holder of a permission (the transferor) may apply to the Authority to transfer the permission, unless (a) the permission is suspended; or (b) the period specified in the permission ends no later than 20 business days before the day on which the transfer is intended to occur.

Paragraph 119(1)(b) of the Principal Regulations is amended by Item [38] of the Amendment Regulations to resolve potential for ambiguity regarding what the “*period specified in the permission*” refers to (that is, the date for expiry of the permission), and to correct a drafting error in relation to the “*20 business days*” timeframe. The amendments make it clear that the day on which the transfer is intended to occur must be no later than 20 business days prior to the permission expiry date. The previous wording of the provision reflected the opposite, which is not the intention.

Item [39] - Paragraph 128(3)(b) (Modification of permission conditions)

In 2019 the *Great Barrier Reef Marine Park Regulations 1983* were repealed and remade in substantially the same form by the Principal Regulations. Prior to this remake, many provisions of the 1983 Regulations provided for the Authority, or the Minister, to extend a period of time for the doing of a thing. To improve consistency across the Principal Regulations, these provisions were updated in the remake to no longer contain individual processes for extending a period of time for the doing of a thing. Instead, such provisions in the Principal Regulations refer to new section 253, which contains one uniform mechanism for the Authority, or Minister, to extend time periods.

Paragraph 128(3)(b) of the Principal Regulations relates to the notice process to be followed by the Authority in circumstances where the Authority is proposing to modify a condition of a permission without the consent of the permission holder. Before taking such action to modify a condition of a permission without the permission holder's consent, the Authority is required to give written notice to the permission holder of the relevant facts and circumstances which justify modifying the condition, and allow the holder 20 business days (or any longer period specified in the notice) to provide reasons why the condition should not be modified. The reference in paragraph 128(3)(b) to “*or any longer period specified in the notice*” is not consistent with the drafting approach generally adopted throughout the Principal Regulations, which is to refer to section 253 (as discussed above). It is apparent that paragraph 128(3)(b) may have been overlooked during the remake, when other similar provisions were redrafted to refer to section 253. Accordingly, Item [39] of the Amendment Regulations updates paragraph 128(3)(b) to relevantly refer to section 253 in order to apply the standard process for extending a period of time for the doing of a thing.

Item [40] - Clause 2 of Part 2 (Cairns planning area) of Schedule 1 (Cairns/Cooktown management area) (table items 4 to 10)

Item [40] of the Amendment Regulations corrects a minor formatting issue, by repealing table items 4 to 10 in Schedule 1, Clause 2 of the Principal Regulations, and substituting these table items so that the headings for the Cairns Planning Area anchorages are now shaded in bold and underlined. This is to achieve consistency with headings for other

anchorages in Schedule 1, which are shaded in bold and underlined (which is consistent with the style of all other anchorage headings in the tables within Schedule 1).

This amendment is intended to assist the reader to identify the seven relevant designated anchorages in the Cairns Planning Area.

Item [41] - Amendment of listed provisions- Fisheries Regulation

Item [41] of the Amendment Regulations updates the definitions in subsection 5(1) of the Principal Regulations for ‘collapsible trap’, ‘commercial fisher’, ‘crab pot’, ‘dilly’, ‘fix a net (except in paragraph (d) of the definition of minor research aid)’, ‘haul’, ‘mesh net’, ‘mesh size’, ‘offshore waters’, ‘recreational fisher’ and ‘set mesh net’. The updates will replace redundant references in these definitions to the repealed *Fisheries Regulation 2008* (Qld) with the equivalent references to the new General Fisheries Regulation, so that all of the definitions will have the same meaning as in the General Fisheries Regulation. None of the definitions will change significantly as a result of the updates.

As at the date of the making of the Amendment Regulations, the relevant definitions were located in the below provisions of the General Fisheries Regulation:

- a. ‘collapsible trap’ –Schedule 10, Part 3, section 2;
- b. ‘commercial fisher’ –section 5;
- c. ‘crab pot’ –Schedule 10, Part 4, section 1;
- d. ‘dilly’ –Schedule 10, Part 4, section 2;
- e. ‘fix’ (except in paragraph (d) of the definition of minor research aid) –Schedule 10, Part 2, section 26;
- f. ‘haul’ –Schedule 10, Part 2, section 27;
- g. ‘mesh net’ –Schedule 10, Part 2, section 5;
- h. ‘mesh size’ –Schedule 10, Part 2, section 34;
- i. ‘offshore waters’ – Schedule 8, Part 3, section 17;
- j. ‘recreational fisher’ – section 6; and
- k. ‘set mesh net’ – Schedule 10, Part 2, section 11.

Part 2 – Contingent amendments

Great Barrier Reef Marine Park Regulations 2019

Item [42] - Section 18 (Harvest fisheries-declaration of fisheries)

The purpose of section 18 of the Principal Regulations is to declare certain fisheries that are described in Queensland fisheries legislation to be ‘harvest fisheries’ for the purposes of the Zoning Plan. Under the Zoning Plan, taking fish in accordance with a harvest fishery (as declared under the Principal Regulations) is allowed in some zones with the Authority’s

written permission, and in accordance with any limitations prescribed in the Principal Regulations.

Section 18 is intended to declare the applicable harvest fisheries. As discussed above in relation to Item [13], references in section 18 of the Principal Regulations to the provisions of the repealed *Fisheries Regulation 2008* (Qld) have (through the amendments made by Item [13]) been replaced with the corresponding provisions of the new Commercial Fisheries Regulation as in force from time to time.

On 1 September 2021 amendments to the Commercial Fisheries Regulation are due to commence which will necessitate a further update to section 18 of the Principal Regulations in order to reflect changes to the numbering of the relevant Schedules in the Commercial Fisheries Regulations. These further updates needed to section 18 of the Principal Regulations are intended to be made by Item [42] of the Amendment Regulations, which will (on the date of commencement of the amendments to the Commercial Fisheries Regulation) omit the references to “*Parts 1, 2, 3, 5, 8, 11, 12, 13 and 14 of Schedule 1 to the Commercial Fisheries Regulation and Part 1 of Schedule 8 to the Commercial Fisheries Regulation*” (which will become redundant) and substitutes the corresponding references to “*Parts 1, 2, 3, 5, 8, 11, 12, 13, 14 and 15 of Schedule 7A to the Commercial Fisheries Regulation.*” Similarly to the update made by Item [13], this further update to be made by Item [42] of the Amendment Regulations will continue to maintain the intent of section 18 of the Principal Regulations and will not result in any policy changes.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Great Barrier Reef Marine Park Amendment (Queensland Fisheries Legislation) Regulations 2021

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the disallowable instrument

The primary object of the *Great Barrier Reef Marine Park (Queensland Fisheries Legislation) Regulations 2021* (the Amendment Regulations) is to amend the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) in order to maintain the existing policy intent and protections of Marine Park values, and support the ongoing complementarity of Queensland fisheries legislation and the regulation of commercial and recreational fishing in the Marine Park.

The Amendment Regulations make minor and machinery updates to the current references to Queensland fisheries laws in the Principal Regulations to refer to the four new Queensland fisheries instruments. To the extent possible, the updates will ensure that regulation of fishing conduct in the Marine Park under the Zoning Plan and Principal Regulations remain consistent with Queensland fisheries legislation. The updates to the Principal Regulations do not result in any significant policy changes and are intended to maintain the existing rules that apply in the Marine Park in relation to fishing activities.

The Amendment Regulations also correct minor errors that have been identified in the Principal Regulations.

Human rights implications

The Amendment Regulations engage the following human rights:

- The right to health (Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- The right to freedom of movement (Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR)).

The right to health

Article 12(1) of the ICESCR provides for the right to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee on Economic, Social and Cultural Rights has stated in General Comment 14 that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, including a healthy environment.

The Amendment Regulations promote the right to a healthy environment by ensuring the Principal Regulations continue to support the key objectives of the GBRMP Act and promote the protection and conservation of the Marine Park. The main object of the GBRMP Act set out in subsection 2A(1) “*to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef*” is promoted by the Principal Regulations by imposing limits on fishing where necessary for protection and conservation of the environment. Additionally, the Principal Regulations promote other objects of the Act, such as allowing ecologically sustainable use of the Great Barrier Reef Region (the Region) for purposes including public enjoyment and appreciation; and recreational, economic and cultural activities (subparagraphs 2A(2)(a)(i) and (iii) of the GBRMP Act), by allowing for commercial and recreational fishing activities to occur in an ecologically sustainable manner.

The Marine Park is a multiple-use park and activities such as sustainable fishing, research and traditional use of marine resources are all socially, culturally and economically important uses of the Marine Park. The Principal Regulations support the ongoing management of recreational and commercial fishing in the Marine Park. Fishing on the Great Barrier Reef is an important pastime and a source of income for both Queensland coastal communities and the seafood industry. The Great Barrier Reef supports commercial, recreational, Indigenous and charter fishing, targeting a range of species including fish, sharks, crabs and prawns. There are number of major commercial fisheries in the Region.

Commercial fishing is limited entry and is spread across the Great Barrier Reef. Viable commercial fishing industries depend on a healthy ecosystem, just as locals and visitors rely on a healthy reef ecosystem for recreation and as a source of local seafood. Recreational fishing is an open access fishery and recreational effort is more heavily focused in inshore areas.

Management of the Marine Park provides for these important activities to continue while also imposing limits where necessary to protect the Great Barrier Reef’s plants, animals and habitats with an aim to maximise the long-term resilience of the Great Barrier Reef against environmental challenges. The Amendment Regulations maintain the existing complementary approaches of applying the relevant Queensland legislation and additionally tailoring provisions to the needs of the Marine Park to regulate fishing and collecting in order to support the maintenance of a healthy environment.

The right to freedom of movement

The Principal Regulations restrict the right to freedom of movement by excluding entry into, or placing conditions on entry into, certain areas of the Marine Park as part of the management of commercial and recreational fishing and in the wider management of the Marine Park’s resources (such as habitat protection). The Amendment Regulations effectively maintain the status quo in relation to such restrictions by updating out-of-date references to Queensland fisheries legislation within the existing provisions that restrict the right to freedom of movement.

Article 12(3) of the ICCPR provides that the right to freedom of movement can be restricted under domestic law on grounds of (among other things) protecting public health. Laws restricting access to areas of environmental significance may be necessary to protect public health by promoting a healthy environment. In order for such a restriction to be permissible it must be reasonable, necessary and proportionate to the protection and be the least intrusive means of producing the desired result.

The Amendment Regulations are largely focused on updating provisions relating to recreational and commercial fishing, but also make minor amendments to other provisions such as those relating to Special Management Areas and the permissions system. The most significant restrictions on the right to freedom of movement contained in the Principal Regulations (that are updated by the Amendment Regulations) are discussed below.

Limitations on fishing or collecting

The general limitations on fishing or collecting (prescribed in section 17 of the Principal Regulations) and the specific limitations on particular types of fishing or collecting such as trawling (section 36 of the Principal Regulations) are directed at providing appropriate opportunities for the conduct of these activities which would otherwise need to be prohibited because of their potential impact on the health of the environment.

The updates contained in the Amendment Regulations largely affect the definitions in subsection 5(1) of the Principal Regulations relevant to the regulation of fishing and collecting, as well as provisions of the Principal Regulations which specifically regulate fishing and collecting, such as sections 15 (Bait netting—limitations on netting), 27 (Netting—limitations) and 36 (Trawling—limitations) of the Principal Regulations.

The existing restrictions contained in the Principal Regulations are reasonable as without such restrictions the numbers of marine species such as fish would not be at sustainable levels. The restrictions are necessary to ensure opportunities to enjoy the marine environment, both commercially and recreationally, into the future. The restrictions are proportionate because fishing or collecting is managed in some zones, rather than prohibited in all zones, so the opportunity to use the environment is maintained where this is consistent with the objectives of the zones in the Zoning Plan.

Trawling limitations- section 36

The Amendment Regulations make changes to section 36 of the Principal Regulations (Trawling-limitations) to prescribe a limitation (in addition to the limitation that ‘the requirements of Queensland fisheries legislation relating to trawling are complied with’) which replicates the relevant provisions of the (now repealed) *Fisheries Regulation 2008* (Qld) and the *Fisheries (East Coast Trawl) Management Plan 2010* (Qld), which are below.

The definition of trawling in the Zoning Plan provides that trawling ‘means trawling in accordance with any limitations prescribed in the Regulations’. For the purposes of the definition of trawling in the Zoning Plan, section 36 of the Principal Regulations prescribes limitations. Prior to the Amendment Regulations the limitations were that the (now

repealed) *Fisheries Regulation 2008* (Qld) and the *Fisheries (East Coast Trawl) Management Plan 2010* (Qld) are complied with. Because those instruments have been repealed, the Amendment Regulations update section 36 to state that the limitation prescribed is that “*the requirements of Queensland fisheries legislation relating to trawling are complied with.*” The intention in making this update is that the new reference to ‘Queensland fisheries legislation’ will apply the relevant limitations that apply under the Queensland fisheries legislation. These amendments are intended to preserve the complementary nature of the laws rather than to make a policy change.

Special Management Areas

The Amendment Regulations update section 44 of the Principal Regulations (Species Conservation (Dugong Protection) SMAs) to align with Queensland regulation directed at protecting dugong.

In response to declines observed in the urban coast dugong population, since 1998 the State of Queensland has restricted or prohibited net fishing activities in significant dugong habitats designated under Queensland fisheries legislation as Dugong Protection Areas (DPAs).

To provide complementary approaches for dugong conservation in the Marine Park, the Queensland DPA provisions are reflected through the designation of a series of Species Conservation (Dugong Protection) Special Management Areas (SMAs) under Division 4.2 of the Zoning Plan together with section 44 of the GBRMP Regulations, to the extent to which those DPAs are in the Marine Park. Additionally, section 44 contains restrictions that are over and above what is required by Queensland fisheries laws. These additional restrictions in SMAs are targeted to meet concerns about environmental sustainability and conservation of species in the Marine Park.

To ensure continued complementarity with Queensland fisheries laws, the Amendment Regulations update out-of-date references in section 44 to refer to the provisions of Queensland fisheries laws that have been repealed and remade in various new instruments. No substantive changes are made to section 44 by the Amendment Regulations, rather the amendments are to maintain the status quo.

The special management provisions that apply to the Species Conservation (Dugong Protection) SMAs impose conditions for use of or entry into certain areas of the Marine Park. These restrictions are reasonable given the need to protect the environment. They are necessary to limit access and use of these areas for their tailored conservation and preservation, and it is necessary and proportionate that access and use is facilitated in a regulated way rather than simply prohibited.

Permissions system

The permissions system provisions contained in Part 3 of the Principal Regulations are an effective means of allowing for use of the Marine Park while ensuring that Marine Park use is not excessive.

The Amendment Regulations make minor updates to section 106 in Part 3 of the Principal Regulations to align with Queensland fisheries legislation. The purpose of section 106 is to limit the circumstances in which the Authority may grant a permission to take leader prawn broodstock in the Habitat Protection Zone in the Mission Beach Leader Prawn Broodstock Capture Area. The updates made to section 106 by the Amendment Regulations are intended only to reflect a change in the phrases used in the corresponding Queensland legislation, and do not alter the existing restrictions on freedom of movement under the Principal Regulations.

The process in the Principal Regulations for obtaining permission from the Authority to use or enter the Marine Park (coupled with the existing restrictions in the Zoning Plan on the use of or entry into zones without permission) restricts the right to freedom of movement by subjecting a person who seeks permission to use or enter the Marine Park (for certain activities listed in the Zoning Plan) to a formal application and assessment process, and to the imposition of conditions on any permission granted. It is reasonable to expect persons seeking to conduct activities listed in the Zoning Plan, which are more likely to impact on the environment in the Marine Park than other activities that do not require permission, to submit an application to the Authority, undergo an assessment process and comply with permission conditions in order to safeguard the environment in the Marine Park from conduct that may cause harm. The process in the Regulations for obtaining a permission is no more onerous than necessary to ensure that an applicant provides the Authority with an appropriate level of information about the proposed activity, that the Authority considers matters relevant to achieving effective management of the Marine Park and that the Authority imposes appropriate conditions on permissions to achieve this.

Overall, the permissions systems regulations are reasonable, necessary and proportionate to protecting the environment in the Marine Park. The restrictions on freedom of movement under the Principal Regulations are minimised to the extent possible by a streamlined and considered permissions system and are justified by the need to protect and preserve the unique environment in accordance with the objects of the Act.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the protection of the right to a healthy environment and, to the extent that existing provisions that restrict the right to freedom of movement are amended, there is no significant increase in the existing restriction and the existing restriction is reasonable, necessary and proportionate.