

EXPLANATORY STATEMENT

Issued by Authority of the Minister for the Environment

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Indian Ocean Territories Marine Parks) Proclamation 2022

Legislative Authority

The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) seeks, among other things, to: provide for the protection of the environment; promote the conservation of biodiversity; enhance protection and management of important natural and cultural places; and promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources. Commonwealth reserves contribute to these objectives.

Subsection 344(1) of the Act provides that the Governor-General may, by Proclamation, declare as a Commonwealth reserve an area of land or sea, including an area of sea in a Commonwealth marine area (as defined in section 24 of the Act).

Subsection 346(1) of the Act provides that a Proclamation must give the reserve a name, state the purposes for which the reserve is declared, state the depth of any land or seabed included in the reserve and assign the reserve to an International Union for Conservation of Nature (IUCN) category.

Purpose

The purpose of the Proclamation is to declare two new Commonwealth reserves in Australia's Indian Ocean Territories. The two Commonwealth reserves are the Christmas Island Marine Park and the Cocos (Keeling) Islands Marine Park.

Background

The Australian Government is committed to establishing a National Representative System of Marine Protected Areas (NRSMPA) in Commonwealth waters. The marine areas of Australia's Indian Ocean Territories (IOT) were highlighted by a 2015 independent review as the most significant gap in the NRSMPA. The 2021 Budget allocated \$5.4 million to support the establishment and management of marine parks at Christmas and Cocos (Keeling) Islands.

Impact and Effect

The declaration of two new Commonwealth reserves, the Christmas Island Marine Park and the Cocos (Keeling) Islands Marine Park, addresses a significant gap in the NRSMPA.

The new marine parks provide for:

- the protection and conservation of biodiversity and other natural, cultural and heritage values; and
- ecologically sustainable use that supports positive social and economic outcomes.

Management plans will be created for the new marine parks in accordance with sections 366-370 of the Act.

Consultation

Consultation was undertaken during the second half of 2020 and throughout 2021 with relevant Commonwealth and state government agencies, IOT-based businesses, local government, cultural and conservation organisations, representative groups, individuals, representatives of the commercial and recreational fishing sectors and relevant commercial fishing operators.

The Director of National Parks (the Director) invited the public to make comment on a draft proposal for the establishment of the marine parks during a 28-day period (between 16 July and 13 August 2021).

Consistent with subsections 351(2) and (3), the Director invited public comments on the *Notice of Proposed Proclamations of Commonwealth reserves—Christmas Island Marine Park and Cocos (Keeling) Marine Park* for a 62-day period (between 5 October and 6 December 2021). More than 12,000 submissions were received, the vast majority of which supported the proposal.

The comments received and the Director's views on those comments were considered by the Minister for the Environment. The Minister subsequently decided to recommend the Proclamation to the Governor-General.

The Office of Best Practice Regulation (OBPR) advised that the Proclamation appears likely to have a minor regulatory impact, and as such, a Regulatory Impact Statement (RIS) was not required to be prepared (OBPR ID 43453).

Details/ Operation

Details of IUCN categories relevant to the Proclamation are at [Attachment A](#).

The areas included in the marine parks are shown at [Attachment B](#).

Other

The Proclamation is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). In accordance with section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, for paragraph 44(2)(b) of the Legislation Act, section 42 of the Legislation Act (disallowance of legislative instruments) does not apply to the Proclamation. As such, the Proclamation is not subject to disallowance and a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Proclamation commences the day after registration on the Federal Register of Legislation.

International Union for the Conservation of Nature (IUCN) categories are an internationally defined set of management categories used for consistency in comparing protected areas across Australia and internationally.

In accordance with paragraph 346(1)(e) of the Act, a Proclamation declaring an area to be a Commonwealth reserve must assign the reserve an IUCN category that is prescribed in Division 10.6 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Regulations). In addition, section 346(2) of the Act allows a Proclamation to divide a reserve into zones and assign each zone to an IUCN category.

The Proclamation assigns the reserves to IUCN category II and divides each reserve into zones of IUCN categories II and IV.

In accordance with section 348 of the Act the Australian reserve management principles for each IUCN category are contained in Schedule 8 of the Regulations. Management of the Commonwealth reserves will be consistent with those principles. The management principles for the relevant IUCN categories are as follows:

Category II: National park:

- The reserve or zone should be protected and managed to conserve its natural condition according to the following principles.
- Natural and scenic areas of national and international significance should be protected for spiritual, scientific, educational, recreational or tourist purposes.
- Representative examples of physiographic regions, biotic communities, genetic resources, and native species should be perpetuated in as natural a state as possible to provide ecological stability and diversity.
- Visitor use should be managed for inspirational, educational, cultural and recreational purposes at a level that will maintain the reserve or zone in a natural or near natural state.
- Management should seek to ensure that exploitation or occupation inconsistent with these principles does not occur.
- Respect should be maintained for the ecological, geomorphologic, sacred and aesthetic attributes for which the reserve or zone was assigned to this category.
- The needs of indigenous people should be taken into account, including subsistence resource use, to the extent that they do not conflict with these principles.

- The aspirations of traditional owners of land within the reserve or zone, their continuing land management practices, the protection and maintenance of cultural heritage and the benefit the traditional owners derive from enterprises, established in the reserve or zone, consistent with these principles should be recognised and taken into account.

Category IV: Habitat/species management area:

- The reserve or zone should be managed primarily, including (if necessary) through active intervention, to ensure the maintenance of habitats or to meet the requirements of collections or specific species based on the following principles.
- Habitat conditions necessary to protect significant species, groups or collections of species, biotic communities or physical features of the environment should be secured and maintained, if necessary through specific human manipulation.
- Scientific research and environmental monitoring that contribute to reserve management should be facilitated as primary activities associated with sustainable resource management.
- The reserve or zone may be developed for public education and appreciation of the characteristics of habitats, species or collections and of the work of wildlife management.
- Management should seek to ensure that exploitation or occupation inconsistent with these principles does not occur.
- People with rights or interests in the reserve or zone should be entitled to benefits derived from activities in the reserve or zone that are consistent with these principles.
- If the reserve or zone is declared for the purpose of a botanic garden, it should also be managed for the increase of knowledge, appreciation and enjoyment of Australia's plant heritage by establishing, as an integrated resource, a collection of living and herbarium specimens of Australian and related plants for study, interpretation, conservation and display.





