**Explanatory Statement**

Issued by Authority of the Minister for the Environment and Water

*Environment Protection and Biodiversity Conservation Act 1999*

*Environment Protection and Biodiversity Conservation Amendment (Macquarie Island Marine Park) Proclamation 2023*

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](http://classic.austlii.edu.au/au/legis/cth/consol_act/epabca1999588/s528.html#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. This includes an area of sea in a Commonwealth marine area, a term that is defined in section 24 of the Act. The Governor‑General may also make, revoke or amend such a Proclamation by another Proclamation in accordance with subsection 350(1).

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.

The Proclamation expands and amends the existing Macquarie Island Marine Park.

The Macquarie Island Marine Park was established by a Proclamation under the *National Parks and Wildlife Conservation Act 1975 (*NPWC Act) on 27 October 1999.

The NPWC Act was replaced by the Act on 16 July 2000. The Proclamation of the Macquarie Island Marine Park was continued in force by the *Environmental Reform (Consequential Provisions) Act 1999* (Schedule 4, item 3) as if it had been declared a Commonwealth reserve under the EPBC Act.

The proclamation of an expanded Macquarie Island Marine Park would increase the existing marine park by 313,465 km² (an almost 300 per cent increase). The expanded park will assist in supporting a unique and important sub-Antarctic marine habitat to ensure it has a chance to prosper in the face of climate change impacts and other emerging pressures.

The waters around Macquarie Island also provide fishing grounds for the Macquarie Island Toothfish Fishery, which targets the Patagonian Toothfish. The fishery is internationally certified for its sustainability, with low bycatch and strong mitigation methods to prevent mortality of seabirds. The fishery will be able to continue in the Habitat Protection Zone (IUCN Category IV) of the expanded marine park, utilising the method of demersal longline.

The expanded marine park will 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.

From late 2022 and throughout 2023, Parks Australia consulted with relevant Commonwealth and state government agencies, and relevant stakeholders including commercial fishing operators and conservation groups. These preliminary consultations helped to inform preparation of a draft proposal.

The Director of National Parks (the Director) invited the public to make comment on a draft proposal to amend the marine park from 20 March to 22 May 2023. Consistent with subsections 351(2) and (3), the Director of National Parks (the Director) invited public comments on the *Notice of a proposed proclamation to alter the boundaries of the Macquarie Island Marine Park* published in the Gazette for a period from 20 March to 22 May 2023. 14,736 submissions were received, the vast majority of which supported the proposal.

After considering the submissions and the Director’s report, the Minister for the Environment and Water recommended the proposed proclamation to the Governor-General.

The Office of Impact Analysis (OIA) advised that the Proclamation appears unlikely to have a more than minor regulatory impact, and as such, an Impact Analysis (IA) was not required to be prepared (OIA23-04944).

Details of IUCN categories relevant to the Proclamation are at Attachment A.

The areas that would now be included in the marine park are shown at Attachment B.

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*.

**Attachment A**

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 reserve to IUCN category II and divides the reserve into zones of IUCN categories Ia, 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 Ia: Strict nature reserve:**

* The reserve or zone should be managed primarily for scientific research or environmental monitoring based on the following principles.
* Habitats, ecosystems and native species should be conserved in as undisturbed a state as possible.
* Genetic resources should be maintained in a dynamic and evolutionary state.
* Established ecological processes should be maintained.
* Structural landscape features or rock exposures should be safeguarded.
* Examples of the natural environment should be secured for scientific studies, environmental monitoring and education, including baseline areas from which all avoidable access is excluded.
* Disturbance should be minimised by careful planning and execution of research and other approved activities.
* Public access should be limited to the extent it is consistent with these principles.

**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.

**ATTACHMENT B**



