

## **EXPLANATORY STATEMENT**

Issued by the Minister for the Environment and Water

*Great Barrier Reef Marine Park Act 1975*

*Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024*

### **Legislative Authority**

The *Great Barrier Reef Marine Park Act 1975* (the Act) establishes the Great Barrier Reef Marine Park Authority (the Reef 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.

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

### **Background**

On 5 June 2023, the Australian and Queensland Governments issued a joint media release, *Tackling the risks to the reef* (the Announcement), which announced critical reforms to improve the protection of threatened species within the Great Barrier Reef. In particular, the reforms include key initiatives to significantly reduce net fishing and other high risk fishing activities impacting the Reef. To give effect to the Announcement, the Queensland Government has implemented a suite of initiatives including through the *Fisheries and Other Legislation (Structural Reform) Amendment Regulation 2023* (Qld) and the *Marine Parks and Other Legislation Amendment Regulation 2024* (Qld) (collectively, the new Queensland fisheries legislation).

The Australian and Queensland Governments have long-standing arrangements relating to the management of fishing and collection of fisheries resources in, and adjacent to, the Great Barrier Reef World Heritage Area (the World Heritage Area) (reflected in Schedule E of the Great Barrier Reef Intergovernmental Agreement 2015). Under these arrangements:

- the Australian Government, through the Reef Authority, is responsible for the long term protection and conservation of the environment, biodiversity and heritage values of the World Heritage Area, including allowing for, and regulating the use of, the Marine Park;
- the Queensland Government is responsible for the management of fishing, fisheries habitats and collection of fisheries resources in and adjacent to the World Heritage Area; and
- both Governments have committed to maintain complementarity of management arrangements relating to fishing activities.

As part of achieving the aim for complementary and compatible management arrangements, the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) generally adopt relevant Queensland fisheries legislation to regulate fishing activities in the Marine Park, to the extent that such legislation is consistent with the Act and the *Great Barrier Reef Marine Park Zoning Plan 2003*.

With a view to continuing that approach, the *Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024* (Amendment Regulations) are intended to complement the new Queensland fisheries legislation to:

- make all hammerhead sharks no-take species;
- establish a “net-free north” area from Cape Bedford to the tip of Cape York;
- prohibit the use of high-risk nets in Species Conservation (Dugong Protection) Special Management Areas; and
- prohibit the use of high-risk nets in the Marine Park from 1 July 2027.

### **Purpose**

The primary objective of the Amendment Regulations is to amend the Principal Regulations to complement the legislation, made by the Queensland Government, implementing the commitments made as part of the Announcement. Achieving this objective ensures that both Governments are consistent in significantly reducing high-risk net fishing and other high risk fishing activities to improve the protection of the Great Barrier Reef.

### **Regulatory Impact**

The Office of Impact Analysis (OIA) was consulted in the preparation of the Amendment Regulations and advised that a policy impact analysis is not required (OIA24-07210).

### **Consultation**

The Reef Authority understands that the new Queensland fisheries legislation was made following a stakeholder consultation process and consultation with Queensland’s Office of Best Practice Regulation.

The Reef Authority conducted targeted consultation with key stakeholders to ensure awareness and transparency about the Amendment Regulations. Representatives from recreational and commercial fishing industries, environmental non-government organisations, local Traditional Owners, and Local Marine Advisory Committee members were briefed on the new Queensland fisheries legislation and the Amendment Regulations.

The Amendment Regulations have been prepared in consultation with the Commonwealth Director of Public Prosecutions, the Australian Fisheries Management Authority, and the Queensland Department of Agriculture and Fisheries. These agencies are generally supportive of the Amendment Regulations.

To the extent the Amendment Regulations contain written descriptions of geographic areas, Geoscience Australia was consulted and has contributed to the formulation of such descriptions.

### **Documents incorporated by reference**

Subsection 66(13) of the Act authorises the Amendment Regulations to apply, adopt or incorporate any matters 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 legislative instruments by reference (which are not Commonwealth Acts or Commonwealth disallowable legislative instruments) as in force from time to time:

- *Fisheries (Commercial Fisheries) Regulation 2019* (Qld), freely available from [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au);
- *Fisheries Declaration 2019* (Qld), freely available from [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au); and
- *Great Barrier Reef Marine Park Zoning Plan 2003*, freely available from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

Additionally, the Amendment Regulations incorporate the following document by reference as in force from time to time:

- Geoscience Australia's Place Name Search online tool, freely available from [www.ga.gov.au](http://www.ga.gov.au).

### **Details and Operation**

Details of the Amendment Regulations including commencement details are set out in Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

## **Abbreviations used in this Explanatory Statement**

Act	<i>Great Barrier Reef Marine Park Act 1975</i>
Amendment Regulations	<i>Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024</i>
Announcement	The Australian and Queensland Governments' joint media release, <i>Tackling the risks to the reef</i> , dated 5 June 2023
Commercial Fisheries Regulation	<i>Fisheries (Commercial Fisheries) Regulations 2019 (Qld)</i>
Dugong Protection SMAs	Species Conservation (Dugong Protection) Special Management Areas
Fisheries Declaration	<i>Fisheries Declaration 2019 (Qld)</i>
General Fisheries Regulation	<i>Fisheries (General) Regulation 2019 (Qld)</i>
Intergovernmental Agreement	<i>Great Barrier Reef Intergovernmental Agreement 2015</i>
Marine Park	Great Barrier Reef Marine Park
New Queensland fisheries legislation	<i>Fisheries and Other Legislation (Structural Reform) Amendment Regulation 2023 (Qld) and Marine Parks and Other Legislation Amendment Regulation 2024 (Qld)</i>
Principal Regulations	<i>Great Barrier Reef Marine Park Regulations 2019</i>
Reef Authority	Great Barrier Reef Marine Park Authority
Zoning Plan	<i>Great Barrier Reef Marine Park Zoning Plan 2003</i>

**Details of the Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024**

**Section 1 – Name**

1. This section provides that the name of the Amendment Regulations is the *Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024*.

**Section 2 – Commencement**

2. This section provides that:
  - Sections 1 to 4 and Part 1 of Schedule 1 of the Amendment Regulations commence the day after the instrument is registered; and
  - Part 2 of Schedule 1 of the Amendment Regulations commences on 1 July 2027.

**Section 3 – Authority**

3. This section provides that the Amendment Regulations are made under the Act.

**Section 4 – Schedules**

4. This section 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 the Amendment Regulations has effect according to its terms.

**SCHEDULE 1 – AMENDMENTS**

***Great Barrier Reef Marine Park Regulations 2019***

**Items [1] to [7], and [9] to [15] – Subsection 5(1) (Definitions)**

5. The Amendment Regulations necessitate a suite of new defined terms, and associated definitions, or the replacement of existing definitions contained in subsection 5(1) of the Principal Regulations. The overarching policy intent for the definitions inserted by the abovementioned items is to adopt the definitions contained in Queensland fisheries legislation for the same term, to ensure a complementary management approach to fishing activities in the Marine Park. In each instance, the preference is for the Principal Regulations to contain standalone definitions for the ease of the reader and to reduce ambiguity, except where the underlying concept has its sole basis in the Queensland fisheries legislation (for example, in relation to Queensland fisheries or licences issued for those fisheries). Details of the new defined terms and associated definitions are provided below.

**Items [1], [3], [5] and [9] – Subsection 5(1)**

6. Items [1], [3], [5] and [9] insert new terms and their associated definitions in subsection 5(1) of the Principal Regulations. The details and basis for the new terms are as follows:

- a. Item [1] inserts definitions for two terms, ‘A1 licence’ and ‘A2 licence’, which relate to commercial fishing licences issued by the State of Queensland to operate in the A1 and A2 fishery (the Aquarium Fish Fishery). The definitions provide that the terms ‘A1 licence’ and ‘A2 licence’ have the same meaning as they have in the Fisheries Declaration. While the A1 and A2 fishery is described in the Commercial Fisheries Regulation, the reference inserted is to the Fisheries Declaration, as that instrument utilises the terms ‘A1 licence’ and ‘A2 licence’ specifically. As such, it is intended that these terms have the same meaning as the ‘A1 licence’ and ‘A2 licence’ operating in the Aquarium Fish Fishery and as issued by the State of Queensland;
- b. Item [1] also inserts a new term, ‘cast net’, and its associated definition in subsection 5(1) of the Principal Regulations. The definition replicates the same definition for the term as in the General Fisheries Regulation;
- c. Item [3] inserts definitions for ‘General Use Zone’ and ‘Habitat Protection Zone’ for the purposes of amendments made to section 56 of the Principal Regulations. These definitions are intended to align with the definitions, in the Principal Regulations, for other zones in the Marine Park by providing that the terms ‘General Use Zone’ and ‘Habitat Protection Zone’ mean the corresponding zones described in the Zoning Plan;
- d. Item [5] inserts a new term, ‘inlet’, and associated definition, which is based on the definition contained in the General Fisheries Regulation. Minor editorial changes have been made to avoid including the word ‘inlet’ in the definition of that same term. The definition of ‘inlet’ incorporates the following document by reference: Geoscience Australia’s Place Name Search online tool, freely available from [www.ga.gov.au](http://www.ga.gov.au). Subsection 66(13) of the Act authorises the Amendment Regulations to apply, adopt or incorporate any matters contained in an instrument or other writing as in force or existing from time to time (overriding section 14 of the *Legislation Act 2003*).
- e. Item [9] inserts three new terms, ‘N11 fishery’, ‘N11 licence’ and ‘nearshore waters’, and their associated definitions based on their meanings in Queensland fisheries legislation. The details and basis for the new terms are as follows:
  - i. ‘N11 fishery’ is intended to reference the bait-fish fishery (or east coast net fishery (no. 11)), and is defined as having the same meaning as in the Commercial Fisheries Regulation;
  - ii. ‘N11 licence’ is intended to reference the licence to operate within the N11 fishery, and is defined as having the same meaning as in the Fisheries Declaration; and
  - iii. ‘nearshore waters’ replicates the definition of that term as it appears in the General Fisheries Regulation.

- f. Item [9] also inserts an additional new term, ‘net fishery (no. NX)’, and its associated definition based on its meaning in the Commercial Fisheries Regulation. The NX fishery, as it is also known, is a new temporary commercial net fishery introduced as part of the new Queensland fisheries legislation as a means to phase out the use of high-risk nets in commercial net fisheries by 30 June 2027. Further detail on this initiative is provided for in relation to Items [22] to [23] and [35].

Items [2], [4], [6], [7], [12], [14] - Subsection 5(1)

7. Items [2], [4], [6], [7], [12] and [14] repeal and replace certain existing definitions in subsection 5(1) of the Principal Regulations. In each instance, where the definition previously included a cross reference to the General Fisheries Regulation, the replacement definitions now insert the definitions from the General Fisheries Regulation as stand-alone definitions in the Principal Regulation to reduce ambiguity.
8. Apart from the definition of mesh net (discussed below in relation to Item [6]), only minor editorial adjustments have been made where necessary to improve the clarity of the definitions, including the following examples:
  - a. In relation to the definition of ‘haul’, the reference in the General Fisheries Regulation to “without the use of a boat” is not replicated in the Principal Regulations to avoid unintentional interactions with uses of the term ‘haul’, for example, where a vessel is being used in fishing but the vessel is not being used to haul the net. Instead, where a reference to the term ‘haul’ in the Amendment Regulations is intended to include ‘by use of a vessel’, this is stated explicitly;
  - b. The structure of the definition of ‘mesh size’ in the General Fisheries Regulation could not be replicated in the Principal Regulations in accordance with modern Commonwealth drafting practices so adjustments were made, which are not intended to alter the practical effect of the definition; and
  - c. In the definition of ‘set mesh net’, the use of “boat” in the General Fisheries Regulation has been replaced in the Principal Regulations with “vessel” to maintain consistency with the terminology used throughout the Principal Regulations.
9. In relation to Item [6], which repeals and replaces the definition of ‘mesh net’, several structural and drafting changes have been made to improve the clarity of the definition adopted from the General Fisheries Regulation. For example:
  - a. The phrase “does not include a net that is hauled by use of a boat for taking fish” has been replaced with “trawl nets” for clarity, as trawl nets are the only net type intended to be excluded by this terminology. This change is made in accordance with stated intention of the definition as contained in the explanatory note of the General Fisheries Regulation. By explicitly excluding the specific net type intended to be referenced by the phrase “does not include a net that is hauled by the use of a boat for taking fish”, any unintended interactions with the definition of ‘haul’ and the types of nets which may be hauled by the use of a vessel are

avoided. This change also attracts the new definition of ‘trawl net’ (discussed below in relation to Item [15]); and

- b. The structure of the definition of ‘mesh net’ has been changed to contain two notes for the reader which outline examples of nets that are, and are not, mesh nets (described in further detail below). In contrast, the definition of ‘mesh net’ contained in the General Fisheries Regulation lists examples of net types which are mesh nets within the definition itself. Modern Commonwealth drafting practice is not to include examples within the body of a definition but rather include them as examples in notes as they are illustrative only. This difference in definitions is not intended to have any practical effect.
10. The first note, included after the definition of ‘mesh net’, contains a list of examples of the types of nets falling within the definition of ‘mesh net’. Except for the reference to ‘bottom set net’, each of these nets appear in the definition of ‘mesh net’ in the General Fisheries Regulation. Reference to ‘bottom set net’ has been included in the first note as its definition in the General Fisheries Regulation states that net type is a ‘mesh net’. Accordingly, the note clarifies that it is intended that ‘bottom set net’ be captured within the definition of ‘mesh net’ in the Principal Regulations.
  11. The second note contains a list of examples of the types of nets that are not considered a ‘mesh net’ for the purposes of the Principal Regulations. While such a list is not included in the General Fisheries Regulation definition of ‘mesh net’, it has been included in the Amendment Regulations for clarity and to assist the reader’s understanding of the scope of the definition of ‘mesh net’. In particular, it was considered important to clarify that a ‘scoop net’ is not intended to fall within the definition of ‘mesh net’ (as discussed below in relation to Item [15]).

#### Item [10] – Subsection 5(1)

12. Item [10] inserts new terms, ‘net free north area’ and ‘net free south area’, and their associated definitions into subsection 5(1) of the Principal Regulations.
13. ‘Net free north area’ means the area geographically described in a new subsection (27(1B)) being inserted as part of Item [23] of the Amendment Regulations.
14. ‘Net free south area’ means area of the Marine Park excluding the ‘net free north area’ and the Dugong Protection SMAs. In other words, the ‘net free south area’ is the rest of the Marine Park south of the ‘net free north area’, excluding the Dugong Protection SMAs (which are only located in southern parts of the Marine Park).
15. Item [10] also inserts a note, after the definition of ‘net free south area’, pointing the reader to section 44 of the Principal Regulations for the designation of the Dugong Protection SMAs.
16. The purpose and use of these terms is further described in relation to Items [22] to [23].

#### Items [11], [13] and [15] – Subsection 5(1)



17. Items [11], [13] and [15] provide for the insertion of several new terms and associated definitions in subsection 5(1) of the Principal Regulations. Apart from ‘relevant net’, the definitions of all terms inserted by these items replicate the corresponding definitions contained in the General Fisheries Regulation.
18. The definition of ‘relevant net’ is based on the definition that was contained in section 65 of the Fisheries Declaration at the time the Amendment Regulations were drafted. Minor adjustments have been made to improve the clarity of the definition, including:
- a. The explicit reference in the Fisheries Declaration to a ‘seine net’ being a ‘relevant net’ has not been replicated, noting that ‘seine net’ falls within the definition of a ‘mesh net’ for the purposes of the Amendment Regulations and is, therefore, already included in the definition of ‘relevant net’; and
  - b. Noting that ‘relevant net’ is a term used to categorise the types of high-risk nets subject of Queensland reforms, ‘tunnel net’ has been included in the definition of ‘relevant net’ as it is also one such net being phased out by the State of Queensland. Further explanation is provided in Item [22] below.
19. In comparison to the corresponding definitions in the General Fisheries Regulation, minor adjustments have been made to improve the clarity of the other definitions inserted by Items [11], [13] and [15] for the purposes of the Principal Regulations, including the following examples:
- a. The reference to “mesh” in the definition of ‘scoop net’ in the General Fisheries Regulation has not been replicated. This change has been made as a scoop net is not intended to fall within the definition of a ‘mesh net’ for the purposes of the Principal Regulations;
  - b. As a consequence of the change to the definition of ‘haul’ (discussed above), the reference to ‘hailed’ in the definition of ‘seine net’ was required to be expanded to specify “including by the use of a vessel” to provide clarity that the net may, or may not, be hauled by a vessel;
  - c. The definition of ‘set pocket net’ has been adjusted from “a bag shaped set net placed across a current or tide” to “a bag shaped net that is set across a current or tide”. This edit is intended to clarify that the use of the word ‘set’ in this context is a reference to the defined phrase ‘set, a net’ (inserted by Item [13]); and
  - d. In the definition of ‘trawl net’, additional text has been inserted to clarify that it is a type of net that may be used in the east coast trawl fishery, as described in Part 1 of Schedule 2 to the Commercial Fisheries Regulation, under the fishery provisions provided for in that Regulation. The intent of this change is to ensure that the requirements for trawl nets under the Commercial Fisheries Regulation apply to that net type (and, consequently, that trawl nets can only be used when being used as part of the east coast trawl fishery).

### **Items [8], [16] to [19] and [24] – Minor drafting amendments**

20. The Amendment Regulations provide for several minor drafting amendments to be made to the Principal Regulations. These include grammatical amendments and removing references to now-repealed provisions of related legislation. The details of each amendment are provided below.
21. Items [8] and [18] are related and make a grammatical amendment to remove the single inverted commas from references to N11 fish in subsection 5(1) and subparagraphs 15(3)(b)(ii) to (iv) of the Principal Regulations.
22. Items [16] and [17] are related and remove provisions from the Principal Regulations that refer to now-repealed provisions of the Commercial Fisheries Regulation, which previously allowed the use of seine nets for bait netting by commercial fishers.
23. Item [19] corrects a grammatical error in the Principal Regulations, by removing a semicolon and replacing it with a full stop, to provide clarity that subparagraph 15(3)(b)(iv) is the last limitation in the list contained under paragraph 15(3)(b).
24. Item [24] provides for the repeal and replacement of subsection 27(2) of the Principal Regulations, without changing the intended operation of that section. By way of explanation:
  - a. Changes have been made to ensure that subsection 27(2), in its entirety, does not apply to bait netting.
  - b. References to specific subparagraphs of subsection 27(1) have been removed due to the abovementioned change. The majority of these subparagraphs are also repealed by the Amendment Regulations (see the discussion of Item [21] below).
  - c. The reference to section 42 and Part 7 of Schedule 4 of the Commercial Fisheries Regulation has been removed because those provisions are already provided for in section 15 of the Principal Regulations.
  - d. The existing note following subsection 27(2), which directs the reader to section 15, has not been amended.

### **Item [20] and [29] to [31] – Subsection 17(2) and section 56 ('No take' of hammerhead sharks)**

25. Items [20] and [29] to [31] are related and give effect to the following initiative as implemented by the State of Queensland:
  - a. make all hammerhead sharks no-take species.
26. There are three species of hammerhead shark: great hammerhead shark, smooth hammerhead shark, and scalloped hammerhead shark. The Amendment Regulations achieve the abovementioned initiative by providing for amendments to section 17 of the Principal Regulations in relation to great hammerhead shark and smooth hammerhead

shark; and section 56 of the Principal Regulations in relation to scalloped hammerhead shark.

Item [20] – Subsection 17(2) (great hammerhead shark and smooth hammerhead shark)

27. The Zoning Plan defines ‘fishing or collecting’ as the taking of a plant, animal or marine product in accordance with any limitations prescribed in the Principal Regulations. These limitations are contained in section 17 of the Principal Regulations.
28. Subparagraph 17(2)(a)(i) of the Principal Regulations provides that a specimen of an animal of a species is not to be taken or possessed if the species is specified in Part 1 of the table contained in subsection 27(2). In other words, Part 1 of the table provides species that are ‘no take’.
29. To give effect to abovementioned initiative in relation to great hammerhead shark and smooth hammerhead shark, Item [20] inserts references to these two species of hammerhead shark, by their scientific and common names, into Part 1 of the table contained in subsection 17(2) of the Principal Regulations. This is intended to make those two species of hammerhead shark ‘no take’ species for the purposes of the definition of ‘fishing or collecting’ in the Zoning Plan.
30. It is intended that the changes to subsection 17(2) will not impact the continued operation of the Zoning Plan insofar as the Zoning Plan allows the Reef Authority to grant permissions for the take of these species for purposes other than the defined activity of ‘fishing or collecting’. For example, the Zoning Plan allows for certain zones of the Marine Park to be used or entered with the written permission of the Reef Authority for research purposes (which could involve the take of great hammerhead shark or smooth hammerhead shark). Applications for such permissions are to be considered by the Reef Authority pursuant to the Principal Regulations.

Item [29] and [31] – Paragraph 56(a) (scalloped hammerhead shark)

31. Under the Principal Regulations, scalloped hammerhead shark is a ‘protected species’ and, as such, it is not necessary to list scalloped hammerhead shark in Part 1 of the table contained in subsection 17(2) to give effect to the initiative to “make all hammerhead sharks no-take species”.
32. Section 5.3 of the Zoning Plan relevantly provides that a zone may be used or entered for the purposes of taking an animal or plant of a protected species only in the circumstances listed in that section. One such circumstance, under paragraph 5.3(c), is for a purpose prescribed in the Principal Regulations for this paragraph (and in accordance with any limitation prescribed in the Principal Regulations).
33. Section 56 of the Principal Regulations prescribes the purposes and limitations for paragraph 5.3(c) of the Zoning Plan. Prior to commencement of the Amendment Regulations, section 56 allowed the species *Sphyrna lewini* (scalloped hammerhead shark) to be taken in certain circumstances.

34. To give effect to the initiative of making all hammerhead sharks no-take species, Item [29] of the Amendment Regulations removes the reference to *Sphyrna lewini*, thus removing the provision for this protected species to be taken pursuant to paragraph 5.3(c) of the Zoning Plan. Consequently, it is intended that scalloped hammerhead shark can no longer be taken from the Marine Park unless one of the other circumstances set out in paragraphs 5.3(a) or (b) of the Zoning Plan apply.
35. Paragraph 5.3(a) would still allow scalloped hammerhead shark to be taken in accordance with a permission granted by the Reef Authority. For example, the Reef Authority could still grant a permission for scalloped hammerhead shark to be taken by a person for research purposes.
36. Item [31] is a consequential amendment to the note contained in section 56 of the Principal Regulations and removes reference to “first 2” species, noting the effect of the above item is to remove the existing reference to a third species.

Item [30] – After paragraph 56(b)

37. Item [30] inserts a new paragraph in section 56 of the Principal Regulations, which resolves a potential loophole in the operation of this section. Prior to the commencement of the Amendment Regulations, section 56 appeared to allow the take of certain protected species (as prescribed in section 56) in any zone of the Marine Park without permission, irrespective of the fact that such take would ordinarily only be allowed without permission in the General Use Zone, Habitat Protection Zone and Conservation Park Zone, pursuant to Part 2 of the Zoning Plan.
38. As such, Item [30] clarifies that taking pursuant to section 56 of the Principal Regulations must occur within the ‘General Use Zone’, ‘Habitat Protection Zone’, or ‘Conservation Park Zone’ only. The definitions of these zones are inserted into the Principal Regulations as a result of Item [3] in the case of ‘General Use Zone’ and ‘Habitat Protection Zone’, or already contained in subsection 5(1) of the Principal Regulations in the case of ‘Conservation Park Zone’.

**Items [21], [25] to [28] and [32] – Subsections 27(1) and 44(2) to (6) and Clause 2 and 4 of Schedule 5 (Species Conservation (Dugong Protection) SMAs)**

39. Items [21], [25] to [28] and [32] are related and give effect to the following initiative as implemented by the State of Queensland:
- a. prohibit the use of high-risk nets in Species Conservation (Dugong Protection) Special Management Areas.

Background

40. Paragraph 4.2.1(b) of the Zoning Plan relevantly provides that the Principal Regulations may designate an area as a Special Management Area. Section 43 of the Principal Regulations declares, for section 4.2.1 of the Zoning Plan, the specific areas designated as Special Management Areas. An SMA may be designated for a number of reasons

consistent with the objectives of SMAs contained in section 4.2.2 of the Zoning Plan, including for the conservation of species.

41. Subsection 44(1) of the Principal Regulations provides that each area described in Clause 1 of Schedule 5 is designated as a Dugong Protection SMA. In total, the Principal Regulations designate fifteen Dugong Protection SMAs, which complement the Dugong Protection Areas established by the State of Queensland. The Amendment Regulations do not change the areas of the existing Dugong Protection SMAs in the Principal Regulations.
42. As well as designating Special Management Areas, the Principal Regulations specify restrictions on access to, or the use of, Special Management Areas, referred to in section 4.2.3 of the Zoning Plan as ‘special management provisions’.
43. For the Dugong Protection SMAs, the relevant special management provisions were, prior to commencement of the Amendment Regulations, contained in subsections 44(2) to (6) of the Principal Regulations. The Amendment Regulations change the special management provisions applicable to the Dugong Protection SMAs, consistent with the new Queensland fisheries legislation.
44. Specifically, as part of the Announcement, the Australian and Queensland Governments committed to additional restrictions regarding the use of high-risk nets in these areas to increase the protection of this species.

#### Dugong Protection SMA provisions

45. Item [25] repeals and replaces subsections 44(2) and (3) of the Principal Regulations, mirroring the additional restrictions made by the State of Queensland, as provided for in Part 11 of the Fisheries Declaration at the time the Amendment Regulations were drafted.
46. The new subsection 44(2) specifies that a person must not use the Dugong Protection SMAs listed in column 1 of an item of the table inserted in subsection 44(2) for the purposes of carrying out netting or bait netting specified in column 2. The phrase of “within the ordinary meaning of those expressions” is intended to clarify to the reader that the use of those terms is not intended to attract the definitions of those same terms as contained elsewhere in Principal Regulations. Instead, the ordinary meaning of those expressions is to be applied to subsection 44(2), with the effect being that the special management provisions apply irrespective of whether a person carrying out those activities abides by the limitations prescribed by the Principal Regulations for the purposes of the definitions of those terms in the Zoning Plan.
47. Other than the Shoalwater Bay Species Conservation (Dugong Protection) SMA and an area within the Bowling Green Bay Species Conservation (Dugong Protection) SMA (detailed in relation to Item [26]), all the other Dugong Protection SMAs are, pursuant to the table in the new subsection 44(2), subject to the same restrictions. Specifically, that a person must not, in the SMA:
  - a. use a mesh net with a mesh size of more than 45 millimetres; or

- b. fix more than 1 part of a mesh net if all of the net is in nearshore waters; or
- c. fix any part of a mesh net if part of the net is in offshore waters; or
- d. use a set mesh net; or
- e. use a net that is neither fixed nor hauled.

48. In relation to Shoalwater Bay Species Conservation (Dugong Protection) SMA, at the time the Amendment Regulations were drafted, section 71 of the Fisheries Declaration provided that a person must not use or possess a net, other than a cast net, in the area. In replicating this provision, Item [25] lists the restriction on the use of such nets within the table in the new subsection 44(2) and the restriction regarding possession of such nets within the new subsection 44(3) of the Principal Regulations. An exception to the restriction regarding possession is also included in subsection 44(3) through the phrase “unless the net is stowed or secured on a vessel”. This exception replicates subsection 98(2) of the Fisheries Declaration at the time the Amendment Regulations were drafted and is intended to attract the definitions of ‘possess’ and ‘stowed or secured’ contained in subsection 5(1) of the Principal Regulations.

#### Exceptions

49. Item [25] inserts a new subsection 44(3A) in the Principal Regulations replicating the exception to the provisions of Queensland’s Dugong Protection Areas as outlined in section 85 of the Fisheries Declaration at the time the Amendment Regulations were drafted. This exception allows a person to use no more than three set mesh nets in a river or creek of the Dugong Protection SMAs listed in paragraphs (g) to (n) in column 1 of item 1 of the table in subsection 44(2), provided that certain requirements are met. These requirements are listed in paragraphs 44(3A)(a) to (i).

50. In comparison to the exception outlined in section 85 of the Fisheries Declaration, minor adjustments have been made in subsection 44(3A), including:

- a. The reference to ‘regulated waters’ is a defined term in the Fisheries Declaration that has not been necessary to replicate in subsection 44(3A) as direct reference to the specific Dugong Protection SMAs is made in the Principal Regulations;
- b. The phrase “up to 3 set mesh nets” has been replaced with “no more than 3 set mesh nets” to provide clarification that a third set mesh net may be used; and
- c. Separate definitions for a net’s ‘drop’ and ‘meshes’ has not been replicated because this would necessitate the inclusion of these terms and associated definitions in subsection 5(1) of the Principal Regulations for the purposes of paragraph 44(3A)(e) only. Instead, the effect of the definitions are drafted into paragraph 44(3A)(e) as the concepts of a net’s ‘drop’ and ‘meshes’ are changed to rows of mesh between the top and bottom of the net.

51. Item [25] also inserts a new subsection 44(3B) in the Principal Regulations replicating the exception to the provisions applicable to Queensland’s Dugong Protection Areas, as

outlined in section 97 of the Fisheries Declaration at the time the Amendment Regulations were drafted. This exception provides that subsection 44(2) and (3) of the Principal Regulations do not apply if a person carries out the netting or bait netting under a permission. The term ‘permission’ is intended to attract the definition of this term as provided for in subsection 5(1) of the Principal Regulations.

### Consequential amendments

52. As a result of the amendments described above, several consequential amendments to the Principal Regulations are necessary. Items [21], [26] to [28] and [32] provide for consequential amendments as set out below.
53. Item [26] provides for minor drafting amendments to subsection 44(4) of the Principal Regulations to better align with the drafting of the provisions contained in the Amendment Regulations. It is not intended that this change will be of any practical impact.
54. Items [27] and [28] repeal subsections 44(5) and 44(6), respectively, of the Principal Regulations. The provisions contained in these subsections are not featured in the new Queensland fisheries legislation and, in many instances, directly conflict with them. For example, before the commencement of the Amendment Regulations:
  - a. Subsection 44(5) allowed for the use of a ‘set mesh net’ in an area within the Bowling Green Bay Species Conservation (Dugong Protection) SMA, subject to certain requirements. As the new Queensland fishery legislation prohibits the use of a ‘set mesh net’ in the entirety of this Dugong Protection SMA, other than in rivers and creeks as provided for in the new subsection 44(3A), subsection 44(5) is repealed to avoid what would otherwise be conflicting provisions; and
  - b. Similarly, subsection 44(6) allowed for a ‘net that is neither fixed nor hauled’ to be used in an area of the Bowling Green Bay Species Conservation (Dugong Protection) SMA, subject to certain requirements. As the new Queensland fishery legislation prohibits the use of a ‘net that is neither fixed nor hauled’ in the entirety of this Dugong Protection SMA, other than in rivers and creeks as provided for in the new subsection 44(3A), subsection 44(6) is repealed to avoid what would otherwise be conflicting provisions.
55. As a consequence of the changes contemplated in Items [25], and [27] to [28], many of the cross references contained in subsection 27(1) of the Principal Regulations are now redundant. As such, Item [21] repeals the paragraphs 27(1)(a), (d), (e) and (f), as they refer to provisions within section 44 which are repealed by the Amendment Regulations. Additionally, replicating requirements of section 44 in section 27 appears to be of no utility because, where the Zoning Plan permits entry to a zone for ‘netting’, the Zoning Plan provides it is to be subject to the Part 4 of the Zoning Plan (relating to Special Management Areas and special management provisions). Section 27 has not been updated to contain cross references to the new provisions of section 44 for this reason.

56. Additionally, Item [21] also repeals paragraph 27(1)(c) of the Principal Regulations. This provision replicated the special management provision that is contained in subsection 44(4) of the Principal Regulations. As such, paragraph 27(1)(c) appears to be of no utility for the same reason given above in relation to other repealed paragraphs of subsection 27(1).
57. As a consequence of the changes to subsection 44(3) and the repeal of subsections 44(5) and (6) of the Principal Regulations, Clauses 2 and 4 of Schedule 5 of the Principal Regulations are no longer utilised, referenced or needed. As such, Item [32] repeals these clauses of the Principal Regulations.

### **Items [22] and [23]– Subsections 27(1) (‘Net free north area’ and ‘net free south area’)**

58. Items [22] and [23] are related and give effect to the following two initiatives as implemented by Queensland:
- a. establish a “net-free north” area from Cape Bedford to the tip of Cape York; and
  - b. prohibit the use of high-risk nets in the Marine Park from 1 July 2027.
59. Items [22] to [23] achieve this by amending section 27 of the Principal Regulations.

### Background

60. Relevantly, pursuant to the Zoning Plan:
- a. the General Use Zone and the Habitat Protection Zone may generally be used or entered without the written permission of the Reef Authority for the purpose of “fishing or collecting involving...netting (including bait netting)” (see paragraphs 2.2.3(b) and 2.3.3(b) of the Zoning Plan); and
  - b. the Conservation Park Zone may generally be used or entered without the written permission of the Reef Authority for the purpose of “fishing or collecting involving...bait netting” (see paragraph 2.4.3(b) of the Zoning Plan).
61. The Zoning Plan defines ‘netting’ as meaning netting in accordance with any limitations prescribed in the Principal Regulations. Such limitations are contained in section 27 of the Principal Regulations.
62. Item [22] creates new rules in the following two distinct areas of the Marine Park (with the definition of these areas inserted as a consequence of Item [10]) for the purposes of prescribing netting limitations in section 27 of the Principal Regulations:
- a. the ‘net free north area’, which is broadly the area of the Marine Park north of Cape Bedford; and
  - b. the ‘net free south area’, which is broadly the area south of the ‘net free north area’, excluding the Dugong Protection SMAs.



63. Item [22] inserts new provisions into subsection 27(1), which provide that a commercial fisher must not carry out netting using a ‘relevant net’ to take fish for commercial purposes in the ‘net free north area’ (subparagraph 27(1)(g)(i)) or in the ‘net free south area’ (paragraph 27(1)(h)). As provided for in Item [13], ‘relevant net’ is defined in subsection 5(1) of the Principal Regulations as a cast net, a mesh net, a set pocket net or a tunnel net.

#### Net free north area

64. In relation to the ‘net free north area’, Item [22] inserts a new paragraph 27(1)(g) into the Principal Regulations, which contains netting limitations intended to replicate the provisions contained in subsection 65(2) of the Fisheries Declaration at the time of drafting the Amendment Regulations. The following minor adjustments have been made:

- a. The term ‘regulated waters’ is not replicated as the netting limitations are specific to the ‘net free north area’ in the Amendment Regulations;
- b. The phrase “for trade and commerce” has been replaced with “for commercial purposes” for consistency with the terminology used in the Principal Regulations;
- c. The phrase “stowed and secured” is replaced with ‘stowed or secured’ to attract the definition contained in subsection 5(1) of the Principal Regulations; and
- d. The term ‘boat’ is replaced with ‘vessel’ for consistency with the terminology used in the Principal Regulations.

65. Item [23] inserts subsection 27(1A) into the Principal Regulations, which contains exceptions to the ‘net free north area’ provisions (and ‘net free south area’ provisions discussed below) that are intended, in the case of paragraphs 27(1A)(a) to (d), to replicate the exceptions provided for in subsections 65(3) and (4) of the Fisheries Declaration at the time of drafting the Amendment Regulations. These exceptions allow for commercial fishers to use a ‘relevant net’ if they are doing so under an ‘A1 licence’, an ‘A2 licence’, an ‘N11 licence’ (other than for sale under that licence), or in the ‘N11 fishery’ to take ‘N11 fish’ without N11 being written on the licence other than for sale. Each of these terms are defined in subsection 5(1) of the Principal Regulations as a consequence of Items [1] and [9] of the Amendment Regulations.

66. Item [23] inserts an additional exception in paragraph 27(1A)(f) of the Principal Regulations to allow for the use of a ‘purse seine net’ under a fishing permit granted for the Eastern Skipjack Tuna Fishery. This exception does not feature in the new Queensland fisheries legislation. However, through consultation undertaken by the Reef Authority in relation to the Amendment Regulations, the need for this exception was highlighted by the Australian Fisheries Management Authority. While the Reef Authority understands the fishery has been inactive since 2009, an exception was deemed appropriate in recognition of the Australian Fisheries Management Authority’s role in regulating the commercial take of tuna in the Marine Park. The Queensland Department

of Agriculture and Fisheries was consulted on this exemption and were supportive that it be included in the Principal Regulations.

67. Item [23] also inserts subsection 27(1B) into the Principal Regulations, which provides the meaning of ‘net free north area’ as a coordinate-based description of the geographic area. This description has been provided to, and reviewed by, Geoscience Australia to ensure its accuracy and consistency with the description of the Marine Park boundary in the *Great Barrier Reef (Declaration of Amalgamated Marine Park Area) Proclamation 2004*.
68. In preparing the description of the ‘net free north area’, regard was had to the written description of this term as contained in the Part 2 of Schedule 1 of the Fisheries Declaration. The description contained in the Fisheries Declaration was not replicated exactly, as much of the area included in that description relates to the land and waters of Queensland, which are entirely outside of the Commonwealth Marine Park.

#### Net free south area

69. While the new Queensland fisheries legislation provides for an explicit restriction on the use of ‘relevant nets’ in relation to the ‘net free north area’, the State of Queensland’s approach to achieving a similar outcome in the rest of the Marine Park is different. Primarily, the approach taken has been to cease certain fisheries from either existing entirely (in the case of the net fishery (east coast no. 2) and net fishery (east coast no. 4)) or to significantly change a fishery, move its operation outside of the Marine Park and rename it (in the case of net fishery (no. 1), now renamed as net fishery (no. 15)).
70. Given that the creation and management of such fisheries is the responsibility of the Queensland Government, the Amendment Regulations, instead, aim to regulate the nets which those previous fisheries allowed in a complementary way. Those nets are also the same types of nets included in the definition of ‘relevant net’, provided for in subsection 5(1) of the Principal Regulations as a consequence of Item [13].
71. Consistent with the above aim, Item [22] inserts a new paragraph 27(1)(h) into the Principal Regulations, which provides that a commercial fisher must not carry out netting in the ‘net free south area’ using a ‘relevant net’ to take fish for commercial purposes. In contrast to the new rules for the ‘net free north area’, there is no equivalent provision to the new subparagraph 27(1)(g)(ii) applicable to the ‘net free south area’. This is in recognition of there not being an explicit provision in the new Queensland fisheries legislation providing for this.
72. Similarly, to the ‘net free north area’, Item [23] also provides for exceptions to the netting limitation in the ‘net free south area’. Specifically:
  - a. Item [23] inserts exceptions into the new subsection 27(1A) allowing commercial fishers to use a ‘relevant net’ under an ‘A1 licence’, an ‘A2 licence’, an ‘N11 licence’ (including for sale under that licence) and in the ‘N11 fishery’ to take ‘N11 fish’ without N11 being written on the licence other than for sale under that

licence. Each of these terms are defined in subsection 5(1) of the Principal Regulations as a consequence of Items [1] and [9] of the Amendment Regulations.

- b. Item [23] also provides that the abovementioned exception in relation to the Eastern Skipjack Fishery applies to the ‘net free south area’ too.

73. Although most of the exceptions under new subsection 27(1A) are the same in the ‘net free north area’ as in the ‘net free south area’, there are some intentional differences. These are intended to mirror differences in the rules that apply in the ‘net free north area’ pursuant to the new Queensland fisheries legislation and the State of Queensland’s licencing arrangements in the ‘net free south area’:

- a. Unlike the exception for the ‘net free north area’ in new paragraph 27(1A)(e), the exception relating to the ‘net free south area’ in new subparagraph 27(1A)(e)(i) is broader and is intended to allow the take of fish for sale.
- b. There is also an additional exception that applies only in the ‘net free south area’ under new subparagraph 27(1A)(e)(ii). This exception is intended to allow mesh nets to continue to be used in the NX fishery, which does not operate in the ‘net free north area’. ‘Net fishery (no. NX)’, defined in subsection 5(1) of the Principal Regulations (as a consequence of Item [9]), is a new temporary commercial net fishery introduced by the State of Queensland as a means to phase out the use of high-risk nets by 30 June 2027.

74. As outlined in section 153W of the Commercial Fisheries Regulation at the time of drafting the Amendment Regulations, the net fishery (no. NX) also permits the use of tunnel nets. Despite this, the abovementioned exception in paragraph 27(1A)(e)(ii) does not also refer to ‘tunnel nets’ as the Queensland Department of Agriculture and Fisheries advised that it is a condition of the licences issued for this fishery that the use of tunnel nets in the Marine Park is not permitted.

#### **Item [33] – At the end of Part 18 (Application provision)**

75. Item [33] inserts section 276 into the Principal Regulations. This new application provision clarifies when the Amendment Regulations apply in relation to a permission, permit or a licence. Where a permission, permit or licence is mentioned in subsections 27(1A) and 44(3B) (as inserted by Items [23] and [25], respectively), those references apply to a permission, permit or licence where it was granted or issued (respectively), before, on or after that part of the Amendment Regulations commence.

#### **Items [34] and [35] – Amendments commencing 1 July 2027**

76. Items [34] and [35] are related and give effect to the following initiative as implemented by Queensland:

- a. prohibit the use of high-risk nets in the Marine Park from 1 July 2027.

77. As outlined above in relation to Item [22] and [23], the State of Queensland's implementation of the above initiative has been achieved through the ceasing of certain fisheries, the introduction of the net free north area (and associated provisions), and the introduction of the net fishery (no. NX) and then its subsequent cessation on 30 June 2027.
78. In recognition of the cessation of the net fishery (no. NX), Item [34] amends the newly inserted paragraph 27(1A)(d), which acts as an exception to the 'net free south area' provisions. Item [34] removes reference to 'net fishery (no. NX)' from this paragraph on 1 July 2027 to the effect that the use of mesh nets in the 'net free south area' is further restricted from this time.
79. As a consequence of the change to the Principal Regulations described in Item [34], the term 'net fishery (no. NX)' is no longer utilised in the Principal Regulations from 1 July 2027. As such, Item [35] repeals the definition in subsection 5(1) of the Principal Regulations on 1 July 2027.

**STATEMENT OF COMPATIBILITY FOR A DISALLOWABLE LEGISLATIVE INSTRUMENT THAT RAISES HUMAN RIGHTS ISSUES**

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

***Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024***

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 Legislative Instrument

On 5 June 2023, the Australian and Queensland Governments issued a joint media release, *Tackling the risks to the reef* (the Announcement), which announced critical reforms to improve the protection of threatened species within the Great Barrier Reef. In particular, the reforms include progressing key initiatives to significantly reduce net fishing and other high risk fishing activities impacting the Reef.

The primary objective of the *Great Barrier Reef Marine Park Amendment (Fisheries Reforms) Regulations 2024* (the Amendment Regulations) is to amend the *Great Barrier Reef Marine Park Regulations 2019* (the Principal Regulations) to give effect to the commitments made as part of the Announcement by implementing the following four initiatives in a manner that complements Queensland fisheries legislation:

- make all hammerhead sharks no-take species;
- establish a “net-free north” area from Cape Bedford to the tip of Cape York;
- prohibit the use of high-risk nets in Species Conservation (Dugong Protection) Special Management Areas; and
- prohibit the use of high-risk nets in the Marine Park from 1 July 2027.

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 *Great Barrier Reef Marine Park Act 1975* (the Act) and promote the protection and conservation of the Marine Park. The main object of the 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 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 a 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.

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 approach of adopting relevant Queensland fisheries legislation to regulate fishing 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). By imposing additional restrictions on netting and on the take of hammerhead sharks, the Amendment Regulations further restrict the right to freedom of movement by effectively placing new conditions on entry into certain areas of the Marine Park.

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. 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 primarily focused on imposing new restrictions on destructive high-risk net fishing and other high risk fishing activities. Importantly, the context of the amendments is that they are designed to replicate restrictions that already apply under Queensland legislation and generally do not, from a practical perspective, introduce any greater restrictions than those that presently apply. The intent in this regard is to complement the Queensland regime and ensure there is no potential for ambiguity between Commonwealth and Queensland fisheries legislation relating to the Marine Park.

The main restrictions on the right to freedom of movement that are updated by the Amendment Regulations are discussed below.

#### Restrictions on the take of hammerhead shark

The Amendment Regulations restrict the take of hammerhead shark in the following ways:

- Section 17 is amended to add two species of hammerhead shark, smooth hammerhead shark and great hammerhead shark, to the list of species that cannot be taken or possessed as part of the activity ‘fishing or collecting’.
- Section 56 is amended to remove a provision that allows for the take of scalloped hammerhead.

The effect of these amendments is that the take of all species of hammerhead shark generally cannot occur in the Marine Park without the written permission of the Reef Authority.

The new restrictions are necessary to achieve the legitimate objective of conservation of hammerhead shark species. Scalloped hammerhead shark is nationally classified as ‘conservation dependent’, and other hammerhead shark species have undergone varying levels of reduction in abundance worldwide. Hammerhead shark is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Appendix II includes species not necessarily threatened with extinction, but for which trade must be controlled to avoid utilisation incompatible with their survival.

The new restrictions on the take of hammerhead shark are reasonable and proportionate to the level of protection required. Consideration has been given to whether there are less restrictive alternatives to achieve the objective of conservation of the species, however, the new restrictions are the least restrictive measures possible to achieve this. Rather than applying a blanket restriction, applications may be made to obtain the written permission of the Reef Authority to carry out activities involving take of hammerhead shark for purposes that are consistent with the objectives of the relevant Marine Park zone. For example, existing provisions of the *Great Barrier Reef Marine Park Zoning Plan 2003* (Zoning Plan) that allow for the take of hammerhead shark as part of traditional use of marine resources remain unaffected by the amendments, and certain zones may still be entered or used with the written permission of the Reef Authority for research activities involving the take of hammerhead shark.

#### Restrictions on commercial netting

The Amendment Regulations impose new restrictions on commercial netting activities by generally prohibiting the use of certain net types across the Marine Park, and increasing existing restrictions on the ways in which certain nets may be used in Dugong Protection Special Management Areas.

These restrictions are necessary to achieve the legitimate objective of reducing the destructive impacts of high-risk net fishing activities in the Marine Park, which are an unsustainable fishing practice causing one of the most immediate threats to the Great Barrier Reef.

The new restrictions on commercial netting activities are reasonable and proportionate to the level of protection required for the following reasons:

- Rather than immediately implementing Marine Park-wide restrictions, a staggered approach has been taken to phase out the use of certain nets over time, to allow commercial fishers time to adjust fishing practices. The general prohibitions on the use of certain nets will commence immediately in the northern part of the Marine Park, but further prohibitions in the southern part of the Marine Park will be delayed until 1 July 2027. This timing aligns with complementary prohibitions that have been implemented under Queensland legislation in conjunction with the Queensland Government's \$100 million fisheries structural adjustment package to phase out large commercial gillnet fishing in the Great Barrier Reef.
- Consideration has been given to whether there are less restrictive alternatives to achieve the objective of reducing the destructive impacts of high-risk net fishing activities, however, the new restrictions are the least restrictive measures possible to achieve this. Rather than applying blanket restrictions to all commercial fisheries, exceptions have been included to allow prohibited nets to still be used in certain circumstances, such as for aquarium fish fisheries and commercial bait netting, which are considered to present less risks to the environment in the Great Barrier Reef. Additionally, other non-commercial netting activities allowed for under the Zoning Plan, such as netting that may take place as part of traditional use of marine resources, remain unaffected by the amendments.
- Generally, the restrictions are no greater than those that have already been introduced under Queensland legislation and already apply to the Marine Park. Accordingly, the restrictions do not result in any new impacts on commercial fishers.

### Conclusion

The Amendment Regulations are compatible with human rights. To the extent that human rights are limited by the Amendment Regulations, this is done so in a way that is necessary, reasonable, and proportionate.