



Nature Conservation Act 1992

Nature Conservation (Whales and Dolphins) Conservation Plan 1997

Reprinted as in force on 5 December 1997

Reprint No. 1^{*}

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* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

Information about this reprint

This plan is reprinted as at 5 December 1997.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

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Nature Conservation (Whales and Dolphins) Conservation Plan 1997

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Part 1 Preliminary

1 Short title

This conservation plan may be cited as the *Nature Conservation (Whales and Dolphins) Conservation Plan 1997*.

2 Definitions

In this plan—

boat includes a dedicated platform, but does not include a jet ski.

cetacean means a mammal of the order Cetacea.

commercial whale watching business means a business involving carrying people in a boat or aircraft to watch whales.

dedicated platform means a floating platform used for conducting scientific research on whales or dolphins or for commercial filming of whales or dolphins.

dolphin means a cetacean of the family Delphinidae.

group of special interest dolphins means a group of dolphins declared under section 16 to be a group of special interest dolphins.

group of special interest whales means a group of whales declared under section 16 to be a group of special interest whales.

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management program means the Management Program for the Conservation and Management of Whales and Dolphins (Order Cetacea) in Queensland 1997–2001¹ approved by the Minister on 8 October 1997.

person in control, of a boat or aircraft, includes—

- (a) the person in command of the boat or aircraft; and
- (b) the person who appears to be in control or command of the boat or aircraft.

regulation means the *Nature Conservation Regulation 1994*.

special interest dolphin means a dolphin declared under section 16 to be a special interest dolphin.

special interest whale means a whale declared under section 16 to be a special interest whale.

stranding coordinator means a conservation officer appointed by the chief executive as the coordinator of procedures to be adopted when a whale or dolphin is stranded or at risk of being stranded.

whale means a cetacean of the family Balaenidae, Balaenopteridae, Kogiidae, Physeteridae or Ziphiidae.

3 Expressions to have meaning given in regulation

An expression that is not defined in this plan, but is defined in the regulation, has the meaning given in the regulation.

¹ A copy of this document is available for inspection or purchase at the department's head office and regional offices.

Part 2 Administration of plan and management intent

4 Administration of plan

- (1) This plan is to be administered in conjunction with the management program.
- (2) If there is any conflict between this plan and the management program, the plan prevails over the program.

5 Management intent

The management intent for whales and dolphins is—

- (a) to ensure biologically viable populations of whales and dolphins in the wild are conserved or re-established; and
- (b) to minimise harm and distress caused directly or indirectly to whales and dolphins by human activities; and
- (c) to identify areas of special interest for the conservation of whales; and
- (d) to regularly monitor and review the status of whales and dolphins in Queensland, including the number of whales and dolphins being taken accidentally; and
- (e) to monitor and review the adequacy of environmental impact assessment procedures to ensure they take into account the need to accurately assess the extent of the impact on whales and dolphins or their habitat and develop effective mitigation measures; and
- (f) to encourage sound, ethical and humane research and inventory programs likely to contribute to an understanding of whales and dolphins and their management requirements; and
- (g) to establish, in conjunction with the Queensland Museum, a database of records and information about whales and dolphins; and

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- (2) A person in control of a jet ski must not, without reasonable excuse, bring the jet ski any closer than 300m to a whale or dolphin.
Maximum penalty—120 penalty units.
- (3) A person in water must not, without reasonable excuse, move any closer than 300m to a whale or 100m to a dolphin.
Maximum penalty—120 penalty units.
- (4) A person must not, without reasonable excuse, enter water closer than 300m to a whale or 100m to a dolphin.
Maximum penalty—120 penalty units.
- (5) A person in control of a fixed-wing aircraft must not, without reasonable excuse, bring the aircraft any closer to a whale than 300m or an altitude of 1000ft.
Maximum penalty—120 penalty units.
- (6) A person in control of a helicopter must not, without reasonable excuse, bring the helicopter any closer to a whale than 1km or an altitude of 2000ft.
Maximum penalty—120 penalty units.
- (7) Subsections (1) to (6) have effect subject to sections 11 and 18.²
- (8) Subsections (1) to (6) do not apply to a person acting under—
- (a) a permit for scientific purposes granted under the regulation; or
 - (b) a program permitted under the *Marine Parks Act 1982*; or
 - (c) the permission of the chief executive under section 12.³

2 Sections 11 (Restriction in area of special interest for whales) and 18 (Person must not bring boat or aircraft closer to whale or dolphin)

3 Section 12 (Filming of whales)

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7 Protection of whales and dolphins

- (1) A person must not, without reasonable excuse, do any of the following to a whale or dolphin in the wild—
 - (a) deposit rubbish near the whale or dolphin;
 - (b) make a noise that is likely to disturb the whale or dolphin;
 - (c) make a noise that is likely to attract the whale or dolphin;
 - (d) intentionally feed the whale or dolphin;
 - (e) touch the whale or dolphin.

Example of subsection (1)(b)—

Playing a sound recording under water near a whale or dolphin would disturb it.

Maximum penalty—80 penalty units.

- (2) Subsections (1)(c) and (d) do not apply to a person who feeds whales or dolphins under a program permitted under the *Marine Parks Act 1982*.

8 Movement of whales and dolphins

The movement into Queensland of a live whale or dolphin taken from the wild is prohibited⁴ other than under a rescue permit or a scientific purposes permit.

9 Sick, injured or at risk whales or dolphins

- (1) A conservation officer may take the measures the officer considers are reasonably necessary to protect a whale or dolphin that, in the officer's opinion, is—
 - (a) sick or injured; or
 - (b) at risk of harassment.

⁴ See s 115(2)(c)(i) of the regulation (Restrictions on grant of wildlife movement permit—protected wildlife).

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Example 1—

The officer may bring the whale or dolphin ashore or aboard a boat.

Example 2—

The officer may direct a person in control of a boat to move the boat away from the whale or dolphin.

- (2) Without limiting subsection (1)(b), a whale or dolphin may be at risk of harassment if—
- (a) the whale or dolphin is—
 - (i) a morphological or colour-variant whale or dolphin; or
 - (ii) a female whale or dolphin that has recently given, or is about to give, birth; or
 - (iii) a calf separated from a whale or a group of whales; or
 - (b) the whale or dolphin is in a place readily accessible to members of the public.
- (3) If the chief executive grants a rescue permit for the rehabilitation of a sick or injured whale or dolphin, the chief executive may state when it is to be returned to the wild.

10 Commercial whale watching

A person must not carry on a commercial whale watching business other than—

- (a) under a commercial whale watching permit granted under the regulation;⁵ or
- (b) if the business is carried on in a marine park—under a permission granted under the *Marine Parks Act 1982*.

Maximum penalty—165 penalty units.

⁵ See section 118 of the regulation (Restrictions on grant of commercial whale watching permit).

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- (a) a person takes a whale or dolphin in the course of a lawful activity that was not directed towards the taking; and
 - (b) the taking could not have been reasonably avoided.
- (3) If the whale or dolphin is alive and does not appear to be badly injured, the person must—
- (a) if the whale or dolphin can be immediately returned to the water from which it was taken without injuring or distressing it—
 - (i) take reasonable steps to immediately return the whale or dolphin to the water; and
 - (ii) as soon as practicable, tell an officer of the department about the whale or dolphin and, if it is injured, the circumstances in which the injury happened; or
 - (b) if the whale or dolphin can not be immediately returned to the water—immediately tell an officer of the department about the whale or dolphin and, if it is injured, the circumstances in which the injury happened.
- (4) If the whale or dolphin is badly injured or dead, the person must immediately tell an officer of the department about the whale or dolphin and the circumstances in which the injury or death happened.

14 Appointment of stranding coordinator

- (1) The chief executive may appoint a conservation officer as a stranding coordinator for the areas of the State stated in the instrument of appointment.
- (2) The stranding coordinator's powers under this plan may be exercised only in the areas stated in the instrument of appointment.

15 Powers of stranding coordinator

- (1) A stranding coordinator may take the measures the coordinator considers are reasonably necessary to protect a

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stranded whale or dolphin or a whale or dolphin at risk of being stranded.

- (2) Without limiting subsection (1), a stranding coordinator may—
 - (a) seek advice and help from others, including the advice and help of an experienced veterinary surgeon; and
 - (b) direct the treatment or, if necessary, the humane killing of a stranded whale or dolphin; and
 - (c) ask a person to move, or help to move, a stranded whale or dolphin to another place for release or treatment; and
 - (d) authorise the Queensland Museum to obtain biological samples from, and information about, the whale or dolphin for the Museum's research.
- (3) To protect the whale or dolphin, the stranding coordinator may direct a person, or a person in control of a vehicle, boat, jet ski or aircraft at a stranding site to—
 - (a) keep a stated distance from the whale or dolphin; or
 - (b) move the vehicle, boat, jet ski or aircraft in the person's control to a stated place or a stated distance from the whale or dolphin.
- (4) A person must comply with the stranding coordinator's direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (4)—165 penalty units.

- (5) If a stranded whale or dolphin dies—
 - (a) a stranding coordinator may, in writing, authorise a person to take, use or keep the stranded whale or dolphin's body; and
 - (b) the person may, under the authority, take, use or keep the body.
- (6) In deciding whether or not to authorise the taking, using or keeping, the stranding coordinator must consult the curator of mammals at Queensland Museum about the scientific significance of the whale or dolphin to the State's collection.

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- (iii) a calf separated from a whale or a group of whales;
or
- (iv) a sick or injured whale or dolphin lost in the upper reaches of an estuary or trapped in a lagoon; and
- (b) a whale or dolphin may be at risk of harassment if it is in a place readily accessible to members of the public; and
- (c) a group of whales or dolphins may be at risk of injury or death if it is at risk of being stranded.

17 Duration of declaration

- (1) A notice declaring a special interest whale or dolphin or group of special interest whales or dolphins has effect from its first publication in a newspaper and continues in force for the period (not more than 30 days) stated in it.
- (2) The Minister may, by another notice, extend the declaration for not more than 6 months.
- (3) The notice extending the declaration is subordinate legislation.

18 Person must not bring boat or aircraft closer to whale or dolphin

A person in control of a boat, jet ski or aircraft must not bring the boat or jet ski any closer than 500m, or the aircraft any closer than 2000ft, to a special interest whale or dolphin or group of special interest whales or dolphins unless the person has a reasonable excuse or the Minister's written permission.

Maximum penalty—165 penalty units.

Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Nature Conservation (Whales and Dolphins) Conservation Plan 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No.[X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| o in c | = order in council | s | = section |
| om | = omitted | sch | = schedule |
| orig | = original | sdiv | = subdivision |
| p | = page | SIA | = Statutory Instruments Act 1992 |
| para | = paragraph | SIR | = Statutory Instruments Regulation 2002 |
| prec | = preceding | SL | = subordinate legislation |
| pres | = present | sub | = substituted |
| prev | = previous | unnum | = unnumbered |

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4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|---------------|-----------------|-----------------|
| 1 | none | 7 November 1997 | 5 December 1997 |

5 List of legislation

Nature Conservation (Whales and Dolphins) Conservation Plan 1997 SL No. 378

made by the Governor in Council on 6 November 1997

notfd gaz 7 November 1997 pp 967–968

commenced on date of notification

exp 6 November 2007 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

6 Table of corrected minor errors

under the Reprints Act 1992 s 44

| Provision | Description |
|-----------|---------------------------------------|
| 14(2) | om ‘The standing’ ins ‘The stranding’ |