

Queensland



ANNO TRICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE



No. 7 of 1982

An Act to provide for the setting apart of tidal lands and tidal waters as marine parks, to amend the Fisheries Act 1976 in certain particulars and for related purposes

[ASSENTED TO 20TH APRIL, 1982]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title.** This Act may be cited as the *Marine Parks Act 1982*.

2. **Commencement.** (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided in subsection (1), the several provisions of this Act shall commence on the day or days appointed by Proclamation in respect of the provision or provisions specified therein.

3. **Repeals.** Each of the enactments of the *Fisheries Act 1976* referred to in the First Schedule is repealed.

4. **Amendments.** (1) Each of the enactments of the *Fisheries Act 1976* referred to in the Second Schedule is amended to the extent indicated in respect of that enactment in that Schedule.

(2) The *Fisheries Act 1976* as amended by this Act may be cited as the *Fisheries Act 1976–1982*.

5. **Continuation of existing marine parks.** (1) A marine park set apart and declared by Order in Council made under the *Fisheries Act 1976* shall continue as a marine park until its declaration as such is revoked in accordance with this Act.

(2) The declaration of a marine park referred to in subsection (1) may be revoked in the manner prescribed by this Act for the revocation of a declaration of a marine park under this Act.

6. **Continuation of existing permits.** (1) A permission notified under the *Fisheries Act 1976* or a permit issued under that Act, which in either case authorizes an activity to be carried on in a marine park set apart and declared by Order in Council made under that Act shall continue to have the force and effect that it has under that Act until—

(a) the declaration of the marine park to which it relates is revoked in accordance with this Act; or

(b) the permission or permit is revoked in accordance with this Act.

whichever event first occurs.

7. **Revocation of permission or permit under Fisheries Act.** The Minister may revoke a permission notified under the *Fisheries Act 1976* or a permit issued under that Act, which in either case authorizes an activity to be carried on in a marine park set apart and declared by Order in Council made under that Act by—

(a) in the case of a permission notified, publishing by public notice notification of the revocation of the permission previously notified; and

(b) in the case of a permit issued, notice in writing given to the holder of the permit.

8. Continued application of existing law to existing marine parks.

(1) For as long as the enactments of the *Fisheries Act 1976* referred to in the First Schedule remain in force, their provisions shall apply, according to their tenor, in relation to each part of a marine park set apart and declared by Order in Council made under that Act until—

- (a) the part ceases to be part of that marine park pursuant to action taken under this Act; or
- (b) provision for the management and control of the part is made pursuant to this Act,

whichever event first occurs.

(2) Regulations made under the *Fisheries Act 1976* that apply in relation to any part of a marine park set apart and declared by Order in Council made under that Act shall continue to apply, according to their tenor, in relation to that part until—

- (a) the part ceases to be part of that marine park pursuant to action taken under this Act; or
- (b) provision for the management and control of the part is made pursuant to this Act,

whichever event first occurs.

9. Interpretation. (1) In this Act except where the contrary appears—

“ animals ” includes—

- (a) spat, spawn, eggs and parts of eggs; and
- (b) the skin, feathers, shell or other part of an animal;

“ coastal waters of Queensland ” means—

- (a) the part or parts of the territorial sea of Australia or the territorial sea adjacent to any island forming part of Queensland that is or are within the area defined in the Third Schedule to the *Petroleum (Submerged Lands) Act 1982*; and
- (b) sea that is on the landward side of any part of the territorial sea referred to in paragraph (a) and is within the area referred to in that paragraph but is not within the limits of the State;

“ inspector ” means a person appointed as an inspector for the purposes of this Act;

“ Local Authority ” means a Local Authority constituted under the *Local Government Act 1936–1980* and Brisbane City Council and includes any Joint Local Authority and any Administrator deemed to be a Local Authority as defined;

“ marine products ” includes oyster, pearl oyster, trochus, green snail, coral, coral limestone, shell-grit and star sand and—

- (a) all forms of indigenous plants and animals;
- (b) aboriginal remains, artifacts or handicraft or traces thereof;
- (c) wrecks, relics or traces thereof; and

- (d) all other material comprising tidal land within an area set apart and declared as a marine park, whether under this Act or under the *Fisheries Act 1976*;
- “Minister” means the Premier of Queensland or other Minister of the Crown for the time being charged with the administration of this Act and includes a person for the time being performing the duties of the Minister;
- “plants” includes fungi, seeds and parts of plants;
- “public authority” means any department of the Government of Queensland, any Local Authority and any body or person constituted by or under an act;
- “public notice” means a notice published—
- (a) in the Gazette; and
 - (b) in a newspaper that circulates throughout Queensland.
- “Queensland waters” means all waters—
- (a) that are within the limits of Queensland; or
 - (b) that are coastal waters of Queensland;
- “take” means, in relation to marine products, remove, gather, catch, capture, kill, destroy, dredge for, raise, carry away, bring ashore, land from a vessel or otherwise or remove from a natural environment and attempt or permit any such act;
- “The Co-ordinator-General” means the corporation sole preserved, continued in existence and constituted by the *State Development and Public Works Organization Act 1971-1981*;
- “tidal land” means land that is submerged at any time by tidal waters;
- “tidal waters” means Queensland waters that are subject to tidal influence.

(2) If at any time the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, the definition “coastal waters of Queensland” in subsection (1) shall continue to have effect as if the breadth of that sea had continued to be 3 nautical miles.

10. Operation of Act. This Act binds the Crown.

11. Functions of Co-ordinator-General. (1) The functions of The Co-ordinator-General under this Act are—

- (a) to assess the suitability of tidal waters and tidal land for setting apart and declaration as marine park under this Act;
- (b) to recommend to the Minister with respect to—
 - (i) areas that should be set apart and declared as marine park;
 - (ii) marine parks that have been set apart and declared, whether under this Act or the *Fisheries Act 1976*, and their management and control;
 - (iii) regulations that should be made under this Act in relation to marine parks or any of them;

- (c) to prepare proposals for submission to the Minister with respect to the setting apart and declaration of marine parks or with respect to the revocation of the setting apart and declaration of any marine park whether the setting apart and declaration was made under this Act or the *Fisheries Act* 1976;
- (d) in connexion with a proposal for setting apart and declaring under this Act a marine park, to prepare a zoning plan for that park;
- (e) to undertake or to arrange for the undertaking of the management and control of marine parks; and
- (f) to do any act or thing that is incidental to the discharge of any of the foregoing functions or that is calculated to aid the proper discharge of any of those functions.

(2) In the discharge of his functions under this Act The Co-ordinator-General shall comply with the provisions of this Act and of relevant regulations made under this Act.

12. Definition of areas of interest. (1) Upon the recommendation of The Co-ordinator-General, the Minister may define an area of interest for declaration as a marine park and, by public notice, publish particulars of the area so defined and invite submissions from members of the public or of interested groups concerning—

- (a) the suitability of the area for the purposes of a marine park;
- (b) the desirability of declaring a marine park in respect of the area;
- (c) the appropriate boundaries of any marine park declared in respect of the area;
- (d) the zoning requirements appropriate to any marine park declared in respect of the area; and
- (e) the appropriate provisions for management of any marine park declared in respect of the area and of any zones of that park.

(2) All submissions offered in response to a public notice shall be made to The Co-ordinator-General and shall be made within the time limited by the public notice that invites them.

13. Consideration of public submissions. (1) The Co-ordinator-General shall consider every submission duly made in response to a public notice published under section 12 and shall report thereon to the Minister.

- (2) The Co-ordinator-General shall, as soon as practicable—
 - (a) prepare a proposal for a marine park to be declared in respect of the area to which the public notice relates; or
 - (b) recommend to the Minister that a marine park be not declared in respect of the area to which the public notice relates.

14. Proposal for marine park. (1) A proposal by The Co-ordinator-General that a marine park should be declared shall include—

- (a) the name, number or other identifying designation proposed to be assigned to the park;
- (b) particulars of the proposed external boundaries of the park defined by means of a map or an appropriate description;
- (c) the reasons on which the proposal is based;
- (d) a zoning plan for the park.

(2) In preparing a proposal the Co-ordinator-General shall have regard to the needs of conservation of, research in and reasonable use and enjoyment by persons of the area to which the proposal relates.

15. Zoning plans. (1) A zoning plan prepared in connexion with a proposal that a marine park be declared—

- (a) may provide that the park shall consist of a single zone or shall be divided into two or more zones;
- (b) where the park is to be divided into two or more zones, shall define each zone by means of a map or an appropriate description;
- (c) shall assign a name or other identifying designation to the single zone or to each of the zones of which the park consists;
- (d) shall provide for the purpose or purposes for which each zone of the park shall be entered or used or may be entered or used.

(2) Provision that a zoning plan may make with respect to a marine park or any zone thereof includes—

- (a) provision by way of regulation;
- (b) provision by way of prohibition;
- (c) provision by way of a penalty for any contravention of or failure to comply with any provision of the plan not exceeding—
 - (i) in the case of an offender who is a natural person \$500 and, in addition, where the offence is a continuing one, a daily penalty of \$100;
 - (ii) in the case of an offender that is a body corporate, \$5000 and, in addition, where the offence is a continuing one, a daily penalty of \$1 000;
- (d) provision for the seizure and forfeiture of any thing taken or had in possession or used in connexion with taking or having in possession any thing or in connexion with entering any area in contravention of any provision of the plan.

(3) Any contravention of or failure to comply with a provision of a zoning plan that is for the time being approved by the Governor in Council under this Act shall constitute an offence against this Act.

16. Establishment of marine parks. (1) Every proposal that a marine park be declared, prepared by The Co-ordinator-General, shall be furnished to the Minister, who shall submit it to the Governor in Council together with his recommendation thereon.

(2) The Governor in Council may, upon the recommendation of the Minister, by Order in Council, set apart and declare the area of tidal waters and tidal land to which the proposal relates as a marine park and may by the same Order in Council, upon a like recommendation, approve the zoning plan submitted as part of the proposal.

(3) An Order in Council, made under subsection (2) shall specify the address of premises at which the zoning plan applicable to the marine park to which the order relates may be inspected, purchased or obtained.

(4) A marine park set apart and declared by Order in Council under subsection (2) shall be taken to have been so set apart and declared on the day on which the order is published in the Gazette or, where a later date is provided for in that behalf in the order, on that date.

(5) An Order in Council made under this section shall be tabled in the Legislative Assembly within 14 sitting days after the date on which the order is published in the Gazette.

17. Constituents of marine parks. Where an area is set apart and declared by Order in Council under this Act as a marine park—

- (a) tidal waters within the area;
- (b) tidal land within the area;
- (c) the subsoil beneath such tidal land, to a depth below the surface as specified in the order;
- (d) the airspace above the area, to a height above the surface as specified in the order; and
- (e) all marine products within the area,

shall be taken to be in the marine park and, for the purposes of this Act, part of the area.

18. Zoning plan for marine parks declared under Fisheries Act. The Co-ordinator-General may prepare a zoning plan with respect to a marine park set apart and declared under the *Fisheries Act* 1976.

Every such zoning plan shall be deemed to have been prepared in connexion with a proposal that a marine park be declared and the provisions of section 15 shall apply in relation to it.

19. Amendment etc. of zoning plans. (1) The Co-ordinator-General may from time to time prepare amendments of a zoning plan approved by the Governor in Council or prepare a zoning plan in substitution for a zoning plan approved by the Governor in Council or for any part thereof.

(2) Every such amendment and zoning plan shall be furnished to the Minister and dealt with as a proposal is required to be dealt with under section 16.

(3) The Governor in Council is hereby empowered to approve by Order in Council, upon the recommendation of the Minister, amendments and zoning plans prepared pursuant to this section and submitted to him.

(4) An Order in Council approving any amendment or zoning plan prepared under subsection (1)—

- (a) shall specify the address of premises at which the amendment or zoning plan to which the order relates may be inspected, purchased or obtained; and
- (b) shall take effect on the day on which it is published in the Gazette or, where a later date is provided for in that behalf in the order, on that date.

20. Public authorities to observe zoning plans. (1) Where a zoning plan for the time being in force in respect of an area set apart and declared as a marine park prohibits or regulates the doing or any act that may be done by a public authority in discharge of its functions or in the exercise of its powers that act shall not be done by or on behalf of the public authority within or in respect of that area except—

- (a) in the case of prohibition, with the approval of the Minister first had and obtained and in accordance with the conditions (if any) to which his approval is subject; or
- (b) in the case of regulation, in accordance with the provisions of the zoning plan.

(2) Subsection (1) applies in respect of all marine parks whether set apart and declared under this Act or under the *Fisheries Act 1976*.

21. Amalgamation and naming of marine parks. The Governor in Council—

- (a) by the Order in Council setting apart and declaring an area as marine park may amalgamate that park and any existing marine park;
- (b) by Order in Council—
 - (i) may amalgamate contiguous marine parks;
 - (ii) may amalgamate marine parks that, although not contiguous, would, in the Minister's opinion, be more conveniently administered as one marine park;
 - (iii) may assign to a marine park a name and vary an assigned name or assign another name in lieu thereof.

22. Restriction on revocation of marine parks. (1) The setting apart and declaration of an area as a marine park, whether under this Act or under the *Fisheries Act 1976*, shall not be revoked, wholly or in part, except in accordance with this section.

(2) The Minister shall cause to be laid on the Table of the Legislative Assembly a notice of a proposal that the setting apart and declaration of an area as a marine park be revoked, wholly or in part.

The notice shall specify the extent of the proposed revocation and the reasons therefor and the purpose or purposes (if any) to which the tidal waters and tidal land within the area to be affected by the revocation are to be put.

(3) If the Legislative Assembly approves of the proposal by resolution on a motion of which not less than 14 days' notice has been given, the Governor in Council may, by Order in Council, revoke the setting apart and declaration of the area concerned as a marine park to the extent specified in the proposal approved.

(4) Upon a revocation made in accordance with this section—

- (a) the area to which the revocation relates shall, to the extent specified in the proposal approved, cease to be a marine park; and
- (b) if the tidal waters and tidal land that have so ceased to be marine park (or any part thereof) are to be put to any purpose other than marine park as specified in the proposal, they or, as the case may be, that part shall thereby become and be a reserve set apart and reserved under the *Land Act 1962-1978* for departmental purposes and may be dealt with according to law for the purpose so specified.

23. Co-ordinator-General's powers re marine parks. (1) In addition to all powers that The Co-ordinator-General might exercise under the *State Development and Public Works Organization Act 1971-1981* for the purposes of an area set apart and declared as a marine park, The Co-ordinator-General may—

- (a) undertake or cause to be undertaken within a marine park, whether set apart and declared under this Act or the *Fisheries Act 1976*, such works as he considers necessary or desirable, having regard to the relevant zoning plan, for the conservation, proper management or, as the case may be, public enjoyment of the park or of any zone thereof;
- (b) make arrangements for anything that The Co-ordinator-General is required or authorized by this Act to do to be done by any officer of or person employed by a Department of the Government of Queensland, any Local Authority, any body or person constituted by or under any Act, any members of the Police Force of Queensland or other persons nominated by the Co-ordinator-General;
- (c) accept gifts, devises and bequests of property to be applied for the purposes of marine park, whether in existence at the material time or not, and, where necessary, to hold such property as trustee upon the trusts declared with respect to the property; and
- (d) do any thing incidental to the proper discharge of The Co-ordinator-General's functions under this Act.

(2) Where works such as are referred to in paragraph (a) of subsection (1) are undertaken, by The Co-ordinator-General or any other person by arrangement with him, The Co-ordinator-General shall ensure that they are undertaken and carried out in such a manner as will least disturb or mar the natural condition of the marine park concerned.

(3) Where arrangements such as are referred to in paragraph (b) of subsection (1) are made an officer or other person referred to in that paragraph authorized by The Co-ordinator-General is authorized to enter upon an area set apart and declared as a marine park and do therein or in respect thereof anything to which the arrangements relate.

24. Unlawful use of expression "marine park". (1) A person—

- (a) shall not publish a statement or advertisement, oral or written; or
- (b) shall not in Queensland do any act or take any step to cause the publication outside Queensland of a statement or advertisement,

which statement or advertisement—

- (c) is calculated to promote the use of or a transaction concerning any land or waters in or adjacent to Queensland; and
- (d) includes the expression "marine park" used in relation to such land or waters or part thereof either alone or in combination with any other expression,

unless such land, waters or, as the case may be, part in relation to which the expression is used is or are part of an area set apart and declared as a marine park, either under this Act or the *Fisheries Act 1976*.

(2) Where a statement or advertisement purports to have been published by a particular person, that person shall be taken to have published the statement or advertisement until the contrary is proved.

(3) It is a defence to a charge of an offence that consists partly of the doing of an act or taking a step referred to in paragraph (b) of subsection (1) to prove that the statement or advertisement was not published.

(4) For the purposes of this section a statement or advertisement shall be taken to be published if—

- (a) it is printed in a newspaper, magazine or other publication;
- (b) it is publicly exhibited—
 - (i) in, on, over or under a vehicle, vessel, building, land or other place of any kind; or
 - (ii) in the air so as to be seen by any person who may be in or on any public place;
- (c) it is contained in a document gratuitously sent or given to any person or thrown into or left upon premises occupied by any person;
- (d) it is publicly announced or displayed by means of transmission of sound or light; or

(e) being an oral statement, it is made by one person to another.

(5) This section shall not be construed to render liable for an offence defined in subsection (1) any person who publishes the statement or advertisement in question by reason only of the fact that—

- (a) he is editor, printer or other person responsible for publishing a newspaper, magazine or similar publication or printing a document referred to in paragraph (c) of subsection (4); or
- (b) he is a person in charge of a means of transmission whereby the statement or advertisement was published.

25. Delegation of Co-ordinator-General's powers etc. The power of delegation conferred on The Co-ordinator-General by section 14 of the *State Development and Public Works Organization Act 1971-1981* extends to his functions and powers under this Act.

26. General offence provision. (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) A person who—

- (a) fails to do that which he is directed or required to do; or
- (b) does that which he is forbidden to do,

by a person acting under the authority of this Act commits an offence against this Act.

(3) A person who commits an offence against this Act is liable, except where a specific penalty is otherwise provided—

- (a) in the case of an offence occurring within an area set apart and declared as a marine park, whether under this Act or under the *Fisheries Act 1976* or in respect of anything within such an area—
 - (i) where the offender is a natural person, to a penalty not exceeding \$500 and, in addition, where the offence is a continuing one, a daily penalty of \$100;
 - (ii) where the offender is a body corporate, to a penalty not exceeding \$5 000 and, in addition, where the offence is a continuing one, a daily penalty of \$1 000; or
- (b) in any other case—
 - (i) where the offender is a natural person, to a penalty not exceeding \$500 and, in addition, where the offence is a continuing one, a daily penalty of \$50;
 - (ii) where the offender is a body corporate, to a penalty not exceeding \$2 500 and, in addition, where the offence is a continuing one, a daily penalty of \$500.

(4) Prosecutions in respect of offences against this Act shall be by way of summary proceedings under the *Justices Act 1886-1980* upon the complaint of the person who at the time proceedings are commenced is The Co-ordinator-General or of a person authorized by him either generally or in a particular case.

(5) A complaint alleging an offence against this Act shall be made within one year from the time when the matter of complaint arose or within six months after the offence came to the complainant's knowledge, whichever period is the later to expire.

(6) A complaint alleging a continuing offence against this Act may allege the commission of the offence over a period of time specified in the complaint.

(7) Where a person is convicted of an offence against this Act the penalty to which he is liable shall be in addition to any forfeiture that he may have thereby incurred or that may be ordered in respect thereof under this Act.

27. Evidentiary provisions. In proceedings for the purposes of this Act—

- (a) a complaint purporting to have been made by the person who is The Co-ordinator-General or by a person authorized by him shall be taken to comply with section 26 (4) until the contrary is proved;
- (b) it shall not be necessary to prove the appointment of a person who at any time is or was The Co-ordinator-General or of an inspector or to prove the authority of an inspector or other person to do anything for the purposes of this Act;
- (c) an averment in a complaint as to the date when the offence to which the complaint relates came to the knowledge of the complainant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the fact averred;
- (d) an averment or allegation in a complaint that the matter of complaint occurred within an area set apart and declared as a marine park, whether under this Act or under the *Fisheries Act 1976*, shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the fact alleged or averred.

28. Service of documents. A notice, document or other writing authorized or required by this Act to be given to any person shall be duly given if—

- (a) it is served personally on the person to whom it is directed; or
- (b) it is left at or sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

29. Protection for persons administering Act. Neither The Co-ordinator-General nor any other person shall incur any liability on account of any thing done bona fide and without negligence for the purposes of this Act for damage or injury alleged to arise by reason thereof.

30. Regulations. (1) Subject to this section, the Governor in Council may make regulations not inconsistent with this Act providing for—

- (a) the preparation, implementation and enforcement of zoning plans;
- (b) the preparation and implementation of management plans and programmes of works for marine parks;
- (c) the manner in which any function, duty or power shall be discharged, performed or exercised for the purposes of this Act, pursuant to a delegation or otherwise;
- (d) the appointment of inspectors for the purposes of this Act and their functions, duties and powers;
- (e) the conduct of persons within or in respect of areas set apart and declared as marine park, whether under this Act or under the *Fisheries Act 1976*;
- (f) the control of the taking of marine products from areas set apart and declared as marine park, whether under this Act or under the *Fisheries Act 1976*, and, where such taking is permitted, the number and size thereof that may be taken;
- (g) the marking of boundaries of areas set apart and declared as marine park and of zones therein;
- (h) penalties in respect of any contravention of or failure to comply with the regulations or any direction given or requisition made under the regulations, not exceeding in any case an amount of \$500;
- (i) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

(2) The regulations may make provision by way of regulation or of prohibition.

(3) The power to make regulations does not extend to the making of regulations to control traffic in or over the waters of a marine park set apart and declared under this Act or the *Fisheries Act 1976*.

Regulations to control traffic in or over the waters of a marine park set apart and declared under this Act or the *Fisheries Act 1976* may be made, at the request of The Co-ordinator-General or otherwise, pursuant to the power to make regulations conferred by the *Queensland Marine Act 1958-1979*.

Before a regulation of a description referred to in the preceding paragraph is made under the *Queensland Marine Act 1958-1979* the Director of Harbours and Marine and the person who is The Co-ordinator-General or officers respectively delegated by them shall consult thereon.

(4) To the extent that there is any inconsistency between a regulation made under this Act and the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum (Submerged Lands) Act 1982* shall prevail.

FIRST SCHEDULE [s. 3]	
ENACTMENTS OF FISHERIES ACT 1976 REPEALED	
Sections 41 to 50 both inclusive	
SECOND SCHEDULE [s. 4]	
Enactment of <i>Fisheries Act 1976</i> amended	Extent of amendment
Section 6	In subsection (1), omit the definition "marine park".
Section 52	Omit— (a) the words "a marine park or"; and (b) the words "park," where they twice occur.
Section 91	Omit subsection (4) and substitute the following subsection:— " (4) The power to make regulations does not extend to the making of regulations to control traffic in or over the waters of a marine park set apart and declared under this Act or any other Act or in or over the waters of a reserve, sanctuary or ground set apart and declared under this Act. Regulations to control traffic in or over the waters of a reserve, sanctuary or ground set apart and declared under this Act may be made, at the request of the Director of Fisheries or otherwise, pursuant to the power to make regulations conferred by the <i>Queensland Marine Act 1958-1979</i> . Before a regulation of a description referred to in the preceding paragraph is made under the <i>Queensland Marine Act 1958-1979</i> the Director of Harbours and Marine and the Director of Fisheries or officers respectively delegated by them shall consult thereon."; In subsection (5), omit the words "marine park,".
Fifth Schedule ..	In clause 9, (a) omit from the note in and at the beginning of the clause the words "Marine parks, reserves" and substituting the words "Reserves"; (b) omit the words "marine parks".