



Queensland

*Nature Conservation Act 1992*

# **Nature Conservation (Whales and Dolphins) Conservation Plan 1997**

**Reprinted as in force on 19 October 2007**

**Reprint No. 1B**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

## Information about this reprint

This plan is reprinted as at 19 October 2007. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

### **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.



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# Nature Conservation (Whales and Dolphins) Conservation Plan 1997

[as amended by all amendments that commenced on or before 19 October 2007]

## 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.

*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.

*management program* means the Management Program for the Conservation and Management of Whales and Dolphins

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(Order Cetacea) in Queensland 1997–2001<sup>1</sup> 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.

***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 Words defined in other nature conservation legislation

- (1) Subject to section 2 and unless this plan provides otherwise, terms used in this plan have the meaning given in the *Nature Conservation (Wildlife Management) Regulation 2006*.
- (2) To remove any doubt, it is declared that subsection (1) also applies to the following, as applied to the *Nature Conservation (Wildlife Management) Regulation 2006* under section 5 of that regulation—
  - (a) a definition under the *Nature Conservation (Administration) Regulation 2006*;
  - (b) a provision of the *Nature Conservation (Administration) Regulation 2006* that aids the interpretation of a term used in that regulation.

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<sup>1</sup> 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.<sup>2</sup>
- (8) Subsections (1) to (6) do not apply to a person acting under—
- (a) a scientific purposes permit; or
  - (b) a program permitted under the *Marine Parks Act 1982*; or
  - (c) the permission of the chief executive under section 12.<sup>3</sup>

## **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—

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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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- (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 prohibited<sup>4</sup> 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.

*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.

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<sup>4</sup> See the Wildlife Management Regulation, section 310(2).

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- (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

- (1) A person must not carry on a commercial whale watching program other than under a permission granted under the *Marine Parks Act 2004*.

Maximum penalty—165 penalty units.

- (2) In this section—

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

## 11 Restriction in area of special interest for whales

- (1) A person must not, without reasonable excuse, bring a boat any closer than 300m to a whale in the part of the Whitsunday Management Area of the Townsville/Whitsunday Marine Park that is shown as an area of special interest for whales on the map of the Whitsunday Management Area included in the management program.

Maximum penalty—165 penalty units.

- (2) Subsection (1) does not apply to a person acting under—

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- (a) a scientific purposes permit; or
- (b) the permission of the chief executive under section 12.

## 12 Filming of whales

A person who films a whale must not move any closer, or bring a boat, jet ski or aircraft any closer to the whale than is stated in sections 6 and 11 without the chief executive's written permission.

Maximum penalty—120 penalty units.

## Part 4 Accidental taking or stranding of whales or dolphins

### 13 Procedure on accidental taking of a whale or dolphin

- (1) In this section—

*take* means net, snare, spear, trap, catch, bring aboard a boat, or cause to go ashore or to become trapped.
- (2) This section applies if—
  - (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

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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 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.



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- (2) The notice must—
  - (a) state—
    - (i) the approximate number and species of whales or dolphins; and
    - (ii) the approximate location of the whales or dolphins; and
    - (iii) any other particulars the Minister considers relevant for identifying the whales or dolphins; and
  - (b) state that it is an offence<sup>5</sup> to bring a boat or jet ski any closer than 500m, or an aircraft any closer than 2000ft, to a special interest whale or dolphin without the Minister's written permission; and
  - (c) be published in a newspaper decided by the Minister.
- (3) The Minister may also publish the notice in other ways.
- (4) Without limiting subsection (1)—
  - (a) a whale or dolphin may be at risk of harassment, injury or death if it 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
    - (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.

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<sup>5</sup> See section 18 (Person must not bring boat or aircraft closer to whale or dolphin).

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**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). Accordingly, this reprint includes all amendments that commenced operation on or before 19 October 2007. 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.

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### 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 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

Reprint No.	Amendments included	Effective	Notes
1A	2006 SL No. 207	21 August 2006	
1B	2007 SL No. 253	19 October 2007	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## 6 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 1 September 2008 (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.

amending legislation—

### **Nature Conservation (Conservation Plans) Amendment Conservation Plan (No. 1) 2006 SL No. 207 pts 1, 5**

notfd gaz 11 August 2006 pp 1725–8

ss 1–2 commenced on date of notification

remaining provisions commenced 21 August 2006 (see s 2)

Note— An explanatory note was prepared

### **Nature Conservation (Conservation Plans) Amendment Conservation Plan (No. 1) 2007 SL No. 253 pts 1, 4**

notfd gaz 19 October 2007 pp 958–9

commenced on date of notification

## 7 List of annotations

### **Definitions**

s 2 def “**commercial whale watching business**” om 2007 SL No. 253 s 7

def “**regulation**” om 2006 SL No. 207 s 31

### **Words defined in other nature conservation legislation**

s 3 sub 2006 SL No. 207 s 32

### **Proximity to whales or dolphins**

s 6 amd 2006 SL No. 207 s 33

### **Commercial whale watching**

s 10 amd 2006 SL No. 207 s 34; 2007 SL No. 253 s 8

### **Restriction in area of special interest for whales**

s 11 amd 2006 SL No. 207 s 33