

**NATIONAL PARKS AND WILDLIFE (MARINE
MAMMALS PROTECTION) AMENDMENT ACT 1986
No. 133**

NEW SOUTH WALES



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ACT 1974**

**NATIONAL PARKS AND WILDLIFE (MARINE MAMMALS
PROTECTION) AMENDMENT ACT 1986 No. 133**

NEW SOUTH WALES



Act No. 133, 1986

An Act to amend the National Parks and Wildlife Act 1974 to make special provision for the conservation and protection of marine mammals; and for other purposes. [Assented to, 4 December 1986]

See also Land and Environment Court (Marine Mammals Protection) Amendment Act 1986.

National Parks and Wildlife (Marine Mammals Protection) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "National Parks and Wildlife (Marine Mammals Protection) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 80, 1974

3. The National Parks and Wildlife Act 1974 is amended in the manner set forth in Schedule 1.

Repeal of Part VI of the Crimes Act 1900 (Offences relating to fauna in danger of extinction)

4. The following provisions of the Crimes Act 1900 are repealed:

- (a) the matter relating to Part VI in section 1;
 - (b) Part VI.
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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
1974

(1) Section 5 (**Interpretation**)—

Section 5 (1), definition of “marine mammal”—

After the definition of “mammal”, insert:

“marine mammal” means a mammal of a species named in Part 5 of Schedule 12;

(2) Section 97 (**Certain protected fauna to be property of the Crown**)—

Section 97 (4), (5)—

After section 97 (3), insert:

(4) Protected fauna which is deemed by this section to be the property of the Crown does not cease to be the property of the Crown merely because a person other than the Crown—

(a) takes possession of it because it is incapable of fending for itself in its natural habitat; or

(b) takes or obtains it under and in accordance with or by virtue of the authority conferred by a general licence under section 120 (being a general licence which declares that any animal so taken or obtained remains the property of the Crown).

(5) The progeny of any protected fauna which was born at a time when the protected fauna was in the possession of a person in the circumstances referred to in subsection (4) (a) or (b) shall, at the time of birth, be deemed to be in the lawful possession of the Crown instead of that person.

(3) Section 99 (**Taking or killing endangered fauna**)—

(a) Section 99 (1) (a)—

Omit “of a species named in Part 1 or 2 of Schedule 12”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
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(b) Section 99 (1)—

Omit “Penalty: \$4,000 or imprisonment for 1 year or both.”,
insert instead:

Penalty:

- (a) in respect of any endangered fauna of a species named in Part 3 (threatened fauna), Part 4 (fauna in imminent danger of extinction) or Part 5 (marine mammals) of Schedule 12—\$10,000 or imprisonment for 2 years or both; or
- (b) in respect of any other endangered fauna—\$4,000 or imprisonment for 1 year or both.

(c) Section 99 (1A)—

After section 99 (1), insert:

(1A) Where—

- (a) a person is convicted by the Land and Environment Court of an offence arising under subsection (1) in relation to a marine mammal; and
- (b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals,

the maximum pecuniary penalty that the Court may impose in respect of the offence is \$100,000.

(4) Section 101 (**Buying, selling or possessing protected fauna**)—

(a) Section 101 (1)—

At the end of the subsection, insert:

Penalty:

- (a) in respect of any protected fauna other than endangered fauna—\$2,000 or imprisonment for 6 months or both;

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- (b) in respect of any endangered fauna of a species named in Part 1 (fauna of special concern) or Part 2 (vulnerable and rare fauna) of Schedule 12—\$4,000 or imprisonment for 1 year or both; or
- (c) in respect of any endangered fauna of a species named in Part 3 (threatened fauna), Part 4 (fauna in imminent danger of extinction) or Part 5 (marine mammals) of Schedule 12—\$10,000 or imprisonment for 2 years or both.

(b) Section 101 (2), (7)—

Omit the subsections.

(5) Part VIIA—

After Part VII, insert:

PART VIIA

MARINE MAMMALS—SPECIAL PROVISIONS

Constitution of Marine Mammals Advisory Committee

112A. (1) There is constituted by this Act the Marine Mammals Advisory Committee.

(2) The Committee shall consist of—

(a) the Chairperson of the Committee who shall be the Director or an officer of the Service nominated by the Director; and

(b) 5 other persons appointed by the Minister.

(3) Of the members appointed by the Minister—

(a) one shall be a person nominated by the Minister administering the Fisheries and Oyster Farms Act 1935;

(b) one shall be a person nominated by the Australian Museum Trust;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
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- (c) one shall be a person nominated by the Zoological Parks Board of New South Wales; and
 - (d) 2 shall be persons representing conservation organisations.
- (4) Schedule 8A has effect with respect to the members and procedure of the Committee.

Functions of the Marine Mammals Advisory Committee

112B. The Marine Mammals Advisory Committee shall have the following functions:

- (a) to advise the Minister on the conservation and protection of marine mammals;
- (b) to advise the Minister in relation to plans for dealing with strandings of marine mammals;
- (c) to advise the Minister on plans of management referred to it under this Part;
- (d) to advise and make recommendations on such matters relating to the administration of this Act with respect to marine mammals as are referred to it by the Minister.

Preparation of plans of management for marine mammals

112C. (1) The Director may cause plans of management to be prepared for the management of populations of marine mammals.

- (2) A plan of management may deal with the following matters:
- (a) population distribution and abundance of marine mammals;
 - (b) threats to the survival of species of marine mammals, populations of species of marine mammals or individual marine mammals;
 - (c) research and strategies related to the conservation and protection of marine mammals;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
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- (d) educational activities which promote an appreciation of the value of marine mammal life or which relate to the conservation and protection of marine mammals;
- (e) international agreements or agreements between the States and the Commonwealth relating to marine mammals.

Adoption, etc., of plan of management for marine mammals

112D. (1) Where a plan of management has been prepared for marine mammals under section 112C, the Director shall give notice as prescribed that the plan of management has been prepared and shall, in that notice—

- (a) specify the address of the place at which copies of the plan of management may be inspected; and
- (b) specify the address to which representations in connection with the plan of management may be forwarded.

(2) Any person interested may, within one month or such longer period as may be specified in the notice, make representations to the Director in connection with the plan of management.

(3) The Director shall, upon the expiration of the period referred to in subsection (2), refer the plan of management, and any representations forwarded to the Director, to the Marine Mammals Advisory Committee for its consideration and advice.

(4) The Director shall thereupon submit the plan of management to the Minister together with any comments or suggestions of the Marine Mammals Advisory Committee.

(5) The Minister shall, before adopting the plan of management, consider the comments and suggestions of the Marine Mammals Advisory Committee.

(6) The Minister may adopt the plan of management without alteration or with such alterations as the Minister may think fit or may refer it back to the Director and the Marine Mammals Advisory Committee for further consideration.

National Parks and Wildlife (Marine Mammals Protection) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
1974—*continued*

(7) The Minister may—

(a) amend or alter a plan of management from time to time;
or

(b) cancel the plan and substitute a new plan.

(8) Where the Minister proposes to amend or alter a plan of management or to cancel a plan of management and substitute a new plan of management, the Minister shall instruct the Director to cause the amendment or alteration or the new plan of management to be prepared, and the Director shall proceed to do so as soon as practicable after being so instructed.

(9) Subsections (1) to (6), inclusive, apply to and in respect of an amendment or alteration referred to in subsection (8) in the same way as they apply to and in respect of a plan of management.

Carrying out of plan of management

112E. Where the Minister has adopted a plan of management, it shall be carried out and given effect to by the Director.

Restriction on issue of licences to take marine mammals for exhibition, etc.

112F. A general licence shall not be issued under section 120 to authorise a person to take, kill or obtain a marine mammal for exhibition or other purposes unless the authorised officer who issues the licence is satisfied that the marine mammal is required for genuine scientific or educational purposes or any other purpose connected with the conservation or protection of marine mammals.

*National Parks and Wildlife (Marine Mammals Protection) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
1974—*continued*(6) Section 167 (**Disposal of fauna and perishable goods when seized or delivered up**)—

Section 167 (4)—

After section 167 (3), insert:

(4) Without affecting the generality of subsection (1), fauna may be disposed of under subsection (1) by being destroyed or returned to its natural environment.

(7) Section 168 (**Disposal of property seized or delivered up**)—

Section 168 (7), (8)—

After section 168 (6), insert:

(7) An order shall not be made by a court under this section in relation to fauna seized or delivered up in connection with an offence under section 102 unless the court is satisfied that the fauna will be adequately cared for by the person to whom the fauna is to be delivered under the order.

(8) An order shall not be made by a court under this section in relation to fauna that has been destroyed or returned to its natural environment under section 167, but if the order is nevertheless made, it does not have any effect.

(8) Section 176 (**Proceedings for offences**)—

(a) Section 176 (1), (1AA)—

Omit section 176 (1), insert instead:

(1) Proceedings for an offence against this Act, the regulations or the by-laws may be taken summarily before a Local Court constituted by a Magistrate sitting alone.

(1AA) Proceedings for an offence under section 98, 99 or 101 may be taken—

(a) before the Land and Environment Court in its summary jurisdiction; or

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(b) before a Local Court constituted by a Magistrate sitting alone.

(b) Section 176 (1A)—

Omit “The maximum penalty that a court”, insert instead “The maximum pecuniary penalty that a Local Court”.

(c) Section 176 (3)—

Omit “magistrate or justices”, insert instead “Judge or Magistrate”.

(d) Section 176 (3)—

After “under”, insert “section 52 of the Land and Environment Court Act 1979 or”.

(9) Section 179 (**Authority to take proceedings**)—

(a) Section 179 (1)—

Omit “Any”, insert instead “Subject to subsection (1A), any”.

(b) Section 179 (1A)—

After section 179 (1), insert:

(1A) Proceedings for an offence against this Act shall not be instituted in the Land and Environment Court in its summary jurisdiction without the written consent of the Director or of such officer or member of the Service as may be authorised by the Director for the purposes of this section.

(c) Section 179 (2)—

Omit “such proceedings”, insert instead “proceedings referred to in this section”.

(10) Schedule 8A—

After Schedule 8, insert:

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SCHEDULE 1—*continued*
 AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
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SCHEDULE 8A

(Sec. 112A (4))

MARINE MAMMALS ADVISORY COMMITTEE

Interpretation

1. In this Schedule—

“appointed member” means a member other than the Chairperson;

“Chairperson” means the Chairperson of the Committee;

“Committee” means the Marine Mammals Advisory Committee constituted by this Act;

“member” means a member of the Committee.

Nomination of members

2. Where, for the purposes of section 112A (3) (a), (b) or (c), a nomination is not made within the time or in the manner specified by the Minister in a written notice given to the person or body entitled to make the nomination, the Minister may appoint a person to be a member of the Committee instead of the person required to be appointed under section 112A (3) (a), (b) or (c) and the person so appointed shall be deemed to have been duly nominated.

Removal from office

3. The Minister may remove from office any appointed member.

Vacation of office

4. An appointed member shall be deemed to have vacated office if the appointed member—

(a) dies;

(b) resigns the office by instrument in writing addressed to the Minister;

(c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958 or a person under detention under Part VII of that Act or becomes a protected person within the meaning of the Protected Estates Act 1983;

(d) is removed from office by the Minister; or

(e) attains the age of 70 years.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT
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Vacancies

5. In the event of the office of an appointed member becoming vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Acting members

6. The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the person, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the appointed member and shall be deemed to be an appointed member.

Term of office

7. The appointed members shall hold office for such period, not exceeding 5 years, as may be specified in their respective instruments of appointment and are eligible, if otherwise qualified, for re-appointment.

Ineligibility by reason of age

8. A person who is of or above the age of 70 years is not eligible for appointment as an appointed member.

Quorum

9. The quorum for a meeting of the Committee is 4 members.

Voting

10. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Procedure

11. Subject to this Act, the procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall be as determined by the Committee.

Expenses

12. A member shall be entitled to receive such travelling and other expenses (if any) as the Minister may determine in respect of the member.

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1974—*continued*

(11) Schedule 12 (Endangered fauna)—

(a) Part 1—

Omit:

<i>Dugong dugon</i>	Dugong.
<i>Arctocephalus forsteri</i>	New Zealand Fur-seal.
<i>Balaena glacialis</i>	Right Whale.
<i>Balaenoptera musculus</i>	Blue Whale.
<i>Megaptera novaeangliae</i>	Humpback Whale.

(b) Part 5—

After Part 4, insert:

Part 5

MARINE MAMMALS

<i>Cetacea</i>	Whales, dolphins, etc.
<i>Pinnipedia</i>	Seals, sea lions, etc.
<i>Sirenia</i>	Dugongs, etc.
