



New South Wales

Fisheries Management (General) Amendment (Miscellaneous) Regulation 2002

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Fisheries

Explanatory note

The object of this Regulation is to make miscellaneous amendments to the *Fisheries Management (General) Regulation 2002*.

The amendments provide for, or relate to, the following:

- (a) the maximum quantity of fish of certain species that a person may take on any one day (the *daily limit*) or may have in his or her possession in specified circumstances (the *possession limit*),
- (b) the prohibition or restriction of certain activities in or on waters constituting critical habitat of the grey nurse shark, and the prohibition of the use of certain fishing gear in the vicinity of that habitat,
- (c) additional conditions in respect of a Class 4 commercial fishing licence, and other matters relating to Lord Howe Island waters (a Class 4 commercial fishing licence may be issued only to a resident of Lord Howe Island),
- (d) the reports that must be made by persons who are registered fish receivers,
- (e) reviews of refusals to grant licences in respect of charter fishing boats,
- (f) declarations of noxious fish and noxious vegetation,
- (g) penalty notice offences.

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Explanatory note

This Regulation is made under the *Fisheries Management Act 1994*, including sections 209, 220ZE and 289 (the general regulation-making power).

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Clause 1 Fisheries Management (General) Amendment (Miscellaneous) Regulation
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**Fisheries Management (General) Amendment
(Miscellaneous) Regulation 2002**

under the

Fisheries Management Act 1994

1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Miscellaneous) Regulation 2002*.

2 Commencement

This Regulation commences on 1 December 2002.

3 Amendment of Fisheries Management (General) Regulation 2002

The *Fisheries Management (General) Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

critical habitat of the grey nurse shark means the areas declared by a notification under section 220T of the Act to be critical habitat of the grey nurse shark and identified as such in the maps in Schedule 1A.

Lord Howe Island waters means the waters within 3 nautical miles of:

- (a) the high water mark on Lord Howe Island, or
- (b) Balls Pyramid.

wire trace line means a line that is made from or includes one or more metal strands.

[2] Clause 14 Application of bag limits and possession limits to commercial fishers

Insert after clause 14 (3):

- (4) Despite subclauses (1)–(3), the daily bag limits and possession limits specified in this Division do apply in respect of fish taken by, or in the possession of, a commercial fisher (whether or not the fish are taken or in possession for sale) if the fish were taken in Lord Howe Island waters by use of a boat and at the time that the fish were taken:
 - (a) the boat was being used as a charter fishing boat, or
 - (b) there were four or more persons on the boat (including any commercial fisher).

[3] Table (Bag limits) to Division 3 of Part 2 (after clause 15)

Omit “(including Murray crayfish)” from the matter relating to Freshwater spiny crayfish in Part 4 of the Table.

[4] Table, Part 4

Insert immediately below the matter relating to Freshwater spiny crayfish:

Murray crayfish	<i>Euastacus armatus</i>	All waters of NSW other than the waters specified in Schedules A–G of the General Trout Closure published in Gazette No 146 on 28 September 2001 at pages 8281–8287	5 (only 1 of which can be longer than 12 cm) during the months of May, June, July and August	10 (only 1 of which can be longer than 12 cm) during the months of May, June, July and August
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[5] Clause 20A

Insert after clause 20:

20A Use of certain fishing gear prohibited in vicinity of critical habitat of grey nurse shark

- (1) Clause 66 (1) and (2) apply to commercial fishers who take or attempt to take fish in the vicinity of critical habitat of the grey nurse shark in the same way as they apply, in relation to any waters other than inland waters, to persons who are not commercial fishers.
- (2) A commercial fisher must not, in the vicinity of critical habitat of the grey nurse shark, take or attempt to take fish in contravention of the provisions that apply because of subclause (1).
- (3) A person must not, in the vicinity of critical habitat of the grey nurse shark, take or attempt to take fish by means of a wire trace line from a vessel that is anchored, moored or otherwise held stationary.
- (4) This clause does not apply:
 - (a) in respect of the critical habitat of the grey nurse shark located at Julian Rocks—from 1 November in any year to 30 April in the following year, or

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(b) in respect of the critical habitat of the grey nurse shark located at Montague Island—from 1 May to 31 October in any year.

(5) In this clause:

vicinity of critical habitat of the grey nurse shark means the areas identified as *buffer zones* in the maps in Schedule 1A showing the areas of critical habitat of the grey nurse shark.

Note. The buffer zones are, generally, the areas within 800 metres of the critical habitat. However, the buffer zones do not all extend 800 metres in all directions—see, for example, the map relating to Little Broughton Island.

Maximum penalty: 100 penalty units.

[6] Clause 146A

Insert after clause 146:

146A Special additional conditions of Class 4 commercial fishing licence

For the purpose of section 104 (4) (a) of the Act, the following are also prescribed as conditions of a Class 4 commercial fishing licence:

- (a) fish taken for sale by the holder of the licence must be sold for consumption on Lord Howe Island,
- (b) the holder of the licence must when taking fish for sale from a boat, for each fishing trip make a record (an *approved trip record*), in the form approved by the Director, of all fish taken by the licence holder or any other person on the fishing trip,
- (c) the holder of the licence must not take fish for sale using a boat unless, before leaving port, the holder recorded in the approved trip record his or her intention to use the boat:
 - (i) as a charter fishing boat (whether or not commercial fishing also takes place), or
 - (ii) solely for commercial fishing,
- (d) the holder of the licence, during any fishing trip in the course of which the holder takes fish for sale from a boat, must not use the boat as a charter fishing boat unless before leaving port, the holder recorded in the

approved trip record his or her intention to use the boat as a charter fishing boat,

- (e) the holder of the licence must keep the approved trip record on the boat at all times during a fishing trip.

[7] Clause 293 Records and reports by registered fish receivers

Omit “named month a report for that month” from clause 293 (2).

Insert instead “quarter (or such other reasonable period as the Director may specify by notice published in the Gazette), a report for the period concerned”.

[8] Clause 293 (2) (b) and (c)

Omit “month” wherever occurring. Insert instead “period”.

[9] Clause 293 (2) (d)

Omit the paragraph.

Insert instead:

- (d) such information as the Director may require of the receiver in relation to the quantity and species of fish that are held in stock by the receiver at the end of the period to which the report relates.

[10] Clause 315 Conduct of review

Insert after clause 315 (2) (c):

, or

- (d) the person had, before 7 July 2000, acquired (or had entered into (and has subsequently completed) a contract to purchase) a boat for use in connection with marine and estuarine charter fishing in New South Wales, and:
 - (i) has used the boat in accordance with an appropriate certificate of survey, and
 - (ii) there are reasons acceptable to the panel why the person failed to satisfy the eligibility criteria and it is fair and reasonable in the circumstances to grant the person a licence.

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[11] Clause 335 Exemption for Lord Howe Island residents

Omit “the Lord Howe Island area” wherever occurring from clause 335 (1) (b) and (2).

Insert instead “Lord Howe Island waters”.

[12] Clause 335 (3)

Omit the subclause.

[13] Clause 340

Omit the clause. Insert instead:

340 Noxious fish and noxious marine vegetation (section 209 of the Act)

(1) For the purpose of section 209 (1) (a) of the Act, the following fish are declared to be noxious fish:

(a) **Class 1**

- (i) Carp (*Cyprinus carpio*),
- (ii) Pacific oysters (*Crassostrea gigas*), but only in estuarine and ocean waters (other than Port Stephens).

(b) **Class 2**

- (i) Banded grunter (*Amniataba percooides*),
- (ii) Speckled mosquito fish (*Phalloceros caudimaculatus*).

(c) **Class 3**

- (i) Tilapia (*Oreochromis mossambicus*, *Tilapia zillii*, *Tilapia mariae*),
- (ii) black striped mussel (all species of the genus *Mytilopsis*).

(2) For the purpose of section 209 (1) (b) of the Act, the following marine vegetation is declared to be noxious marine vegetation:

Class 2

Aquarium caulerpa (*Caulerpa taxifolia*).

(3) Sections 210, 211 and 213 (1) and (2) of the Act do not apply to or in respect of Class 1 noxious fish.

- (4) Section 213 (1) and (2) of the Act do not apply to or in respect of Class 2 noxious fish or Class 2 noxious vegetation if the fish or vegetation concerned is kept in a fully-contained aquarium.

[14] Part 11A

Insert after clause 340:

Part 11A Prohibition or restriction of certain actions on or in critical habitat of grey nurse shark

340A Application of Part

This Part applies:

- (a) in respect of the critical habitat of the grey nurse shark that is located at Julian Rocks—on and from 1 May up to and including 31 October in each year, and
- (b) in respect of the critical habitat of the grey nurse shark that is located at Montague Island—on and from 1 November in each year up to and including 30 April in the following year, and
- (c) in respect of all other critical habitat of the grey nurse shark—at all times.

340B Restrictions on certain fishing

- (1) Clause 66 (1) and (2) apply to commercial fishers who take or attempt to take fish on or in critical habitat of the grey nurse shark in the same way as they apply, in relation to any waters other than inland waters, to persons who are not commercial fishers.
- (2) A commercial fisher must not take or attempt to take fish on or in critical habitat of the grey nurse shark in contravention of the provisions that apply because of subclause (1).
- (3) A person (including a commercial fisher) must not, on or in critical habitat of the grey nurse shark:
 - (a) if in a vessel that is anchored, moored or otherwise held stationary, take or attempt to take fish by means of a line:

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- (i) using bait (whether dead or alive), or
- (ii) using a fly other than an artificial fly or a lure other than an artificial lure, or
- (iii) that is a wire trace line, or
- (b) if on land, take or attempt to take fish by means of a wire trace line, or
- (c) take or attempt to take fish in any circumstances by means of a line that has weights totalling more than 500 grams attached to it, or
- (d) take or attempt to take fish by means of a net other than a landing net of the kind described in clause 53 and used in accordance with that clause.

Maximum penalty: 100 penalty units.

340C Restrictions on diving and other activities

A person must not, on or in critical habitat of the grey nurse shark, do any of the following:

- (a) swim or dive between sunset and sunrise while using any apparatus capable of supplying air to facilitate breathing underwater,
- (b) block an entrance to a cave or gutter containing a shark,
- (c) feed or touch a shark,
- (d) chase or harass a shark,
- (e) wear or use an electronic shark repelling device,
- (f) use a powered scooter.

Maximum penalty: 100 penalty units.

340D Fish Rock

- (1) This clause applies only in respect of so much of the critical habitat of the grey nurse shark as is located at Fish Rock.
- (2) A person must not take or attempt to take any fish by means of a spear, speargun or similar device, other than the following families and species of fish:
 - (a) families:
 - (i) Carangidae (including all trevallies, kingfish and rainbow runner),

- (ii) Scombridae (mackerel and wahoo tuna),
- (iii) Istiophoridae (marlin and sailfish),
- (b) species:
 - (i) cobia (*Rachycentron canadus*),
 - (ii) tailor (*Pomatomus saltator*),
 - (iii) dolphin fish (*Corphaena hippurus*),
 - (iv) Australian salmon (*Arripis trutta*).
- (3) A person must not, while using any apparatus (other than a snorkel) capable of supplying air to facilitate breathing underwater, take or attempt to take any fish by any method.
Maximum penalty: 100 penalty units.

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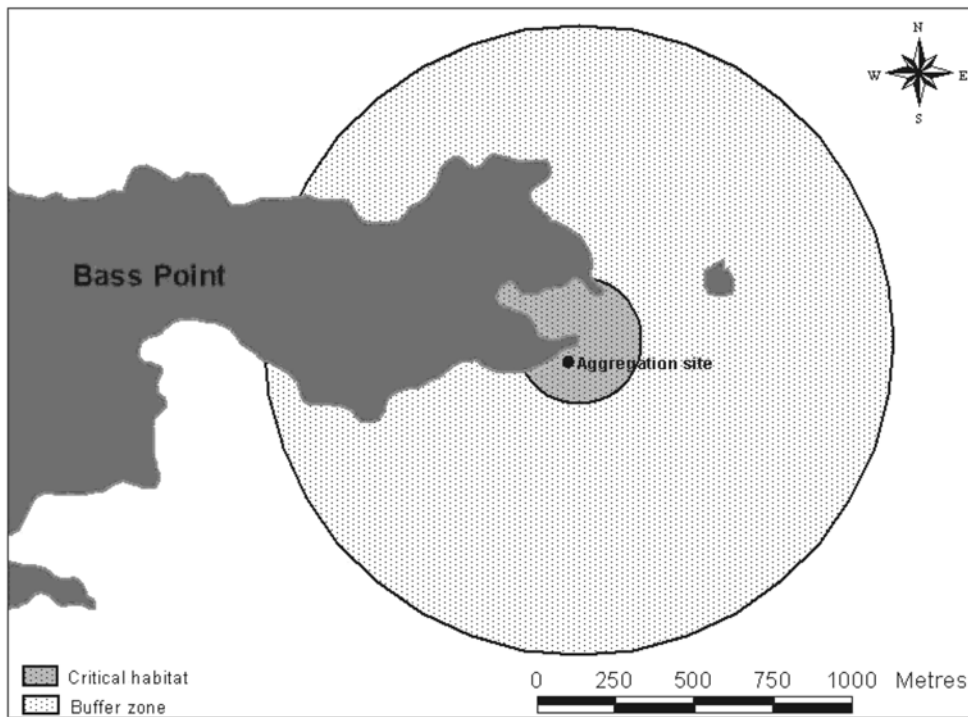
[15] Schedule 1A

Insert after Schedule 1:

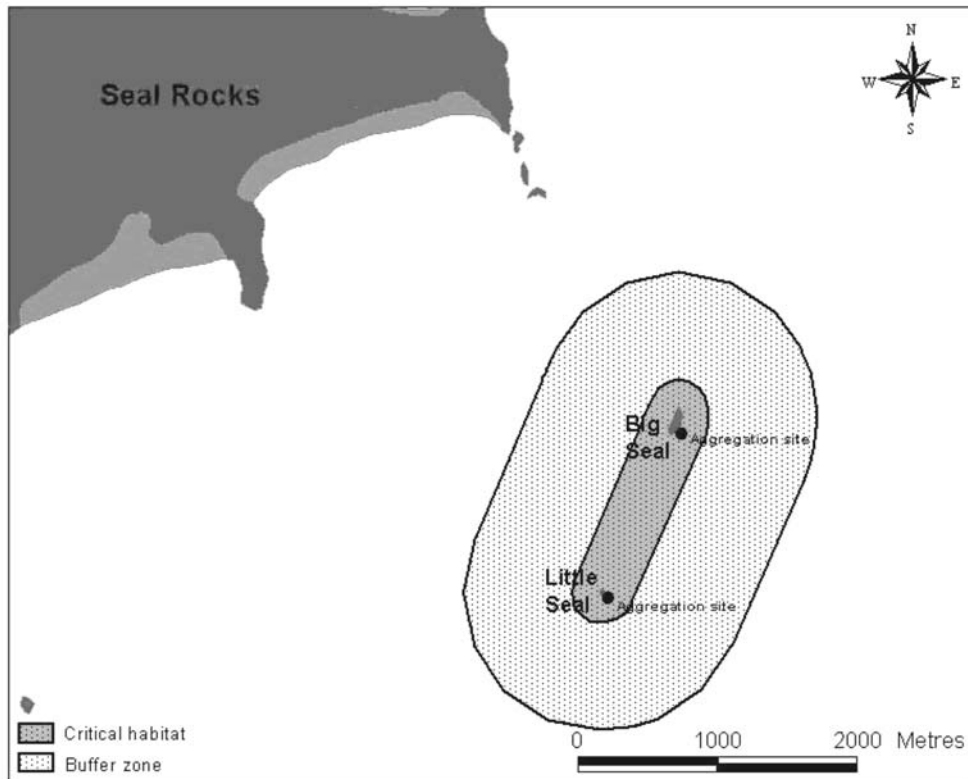
**Schedule 1A Maps of critical habitat of grey nurse
shark**

(Clause 3)

Map 1—Bass Point



Map 2—Big and Little Seal Rocks

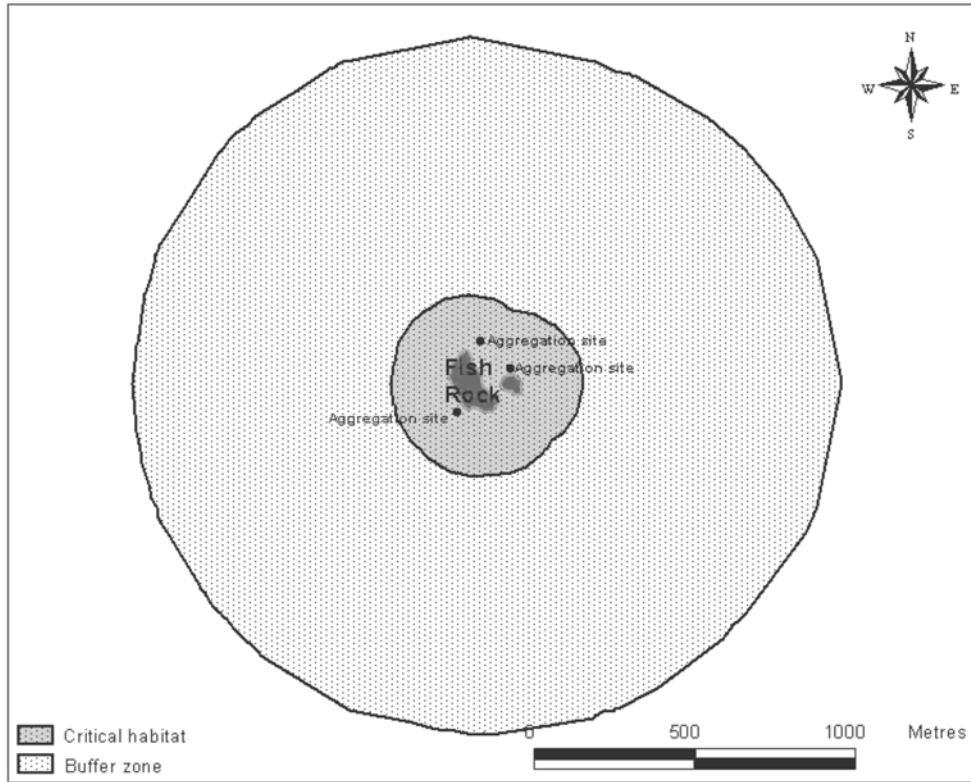


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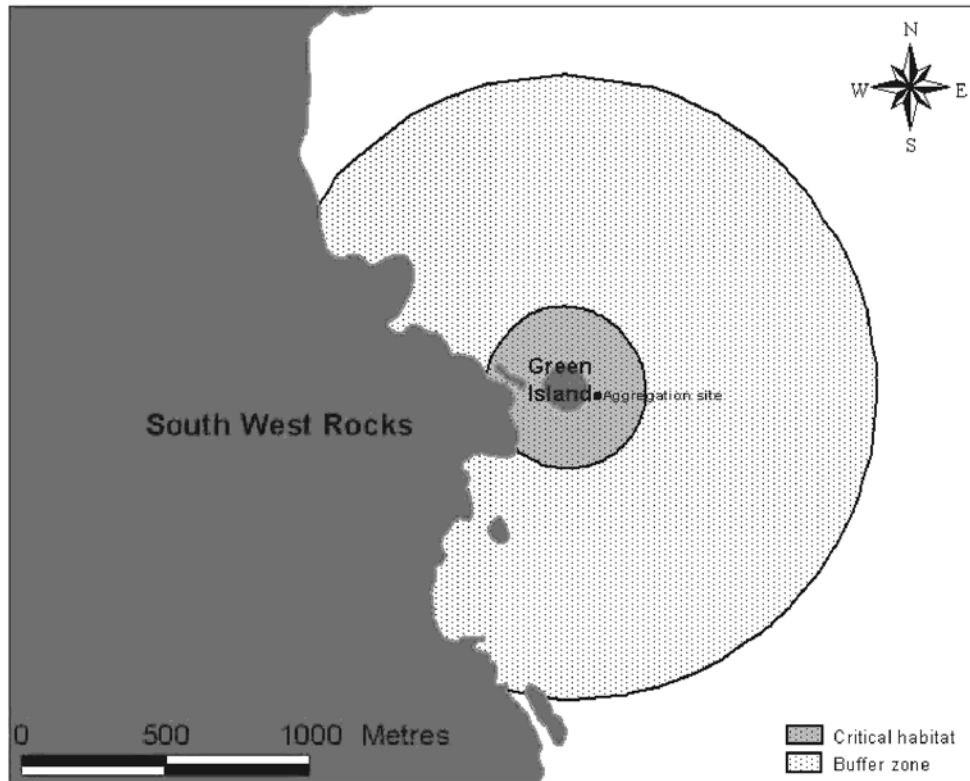
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Map 3—Fish Rock



Map 4—Green Island

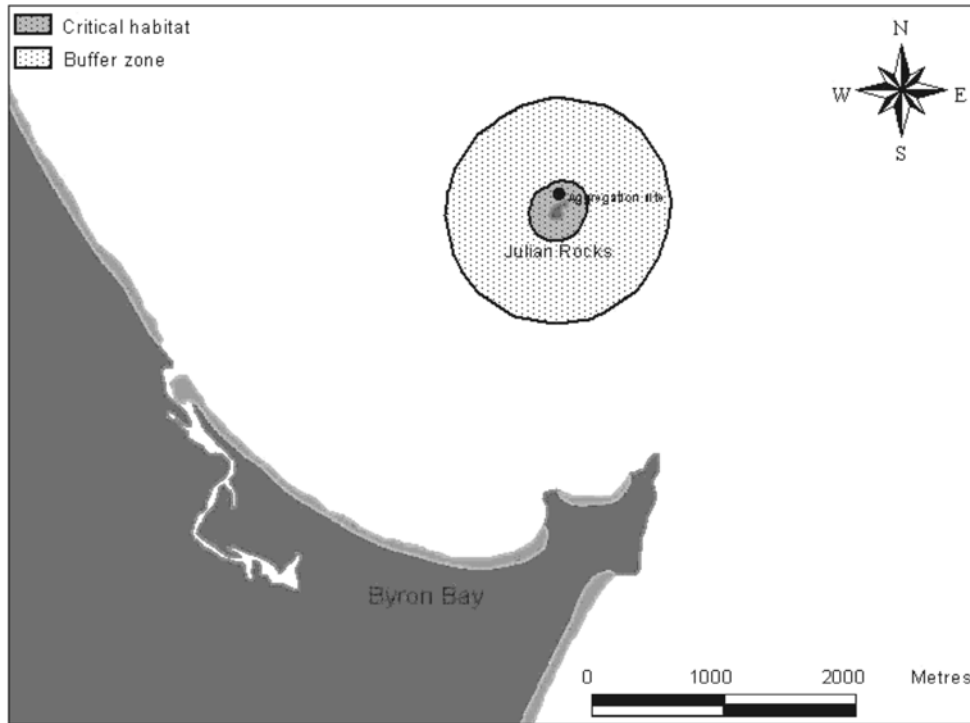


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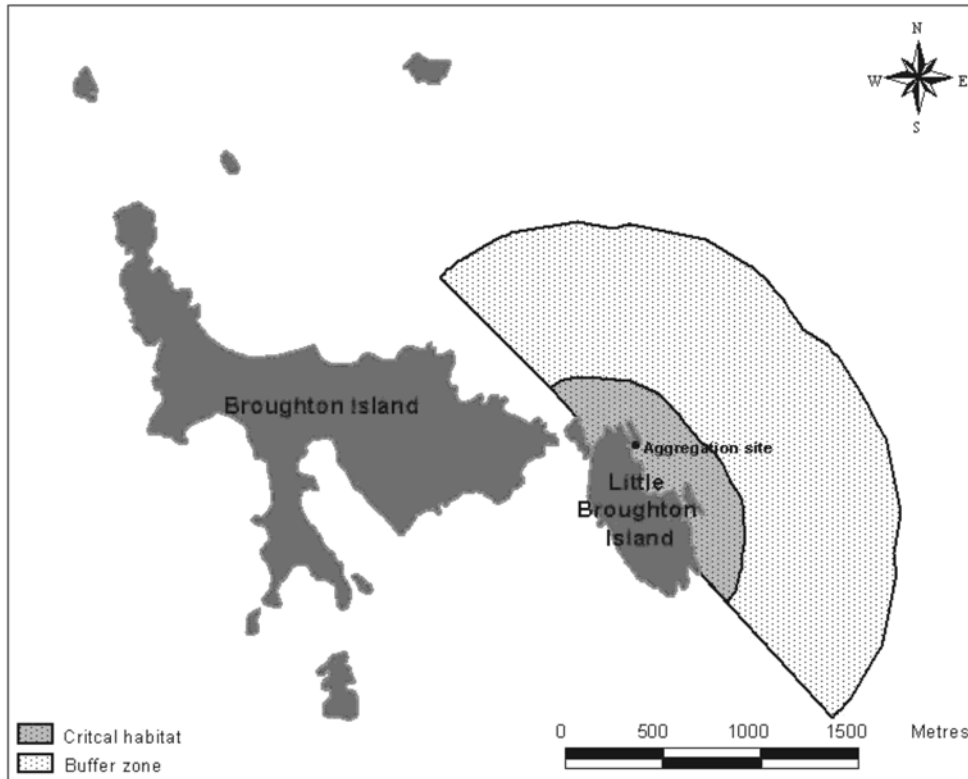
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Map 5—Julian Rocks



Map 6—Little Broughton Island

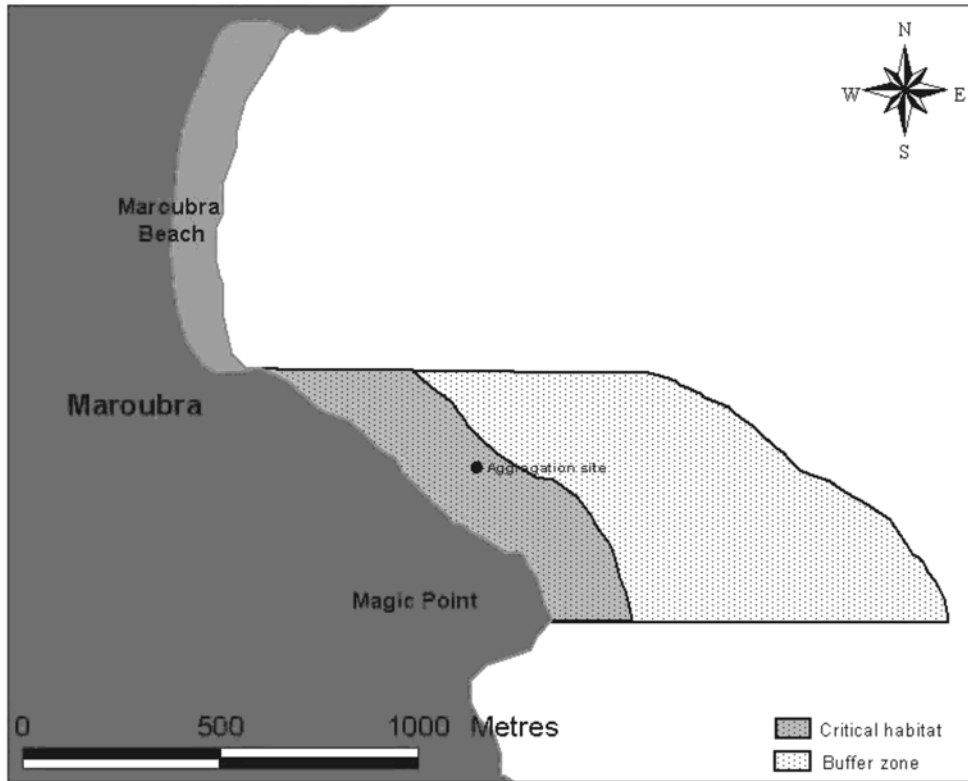


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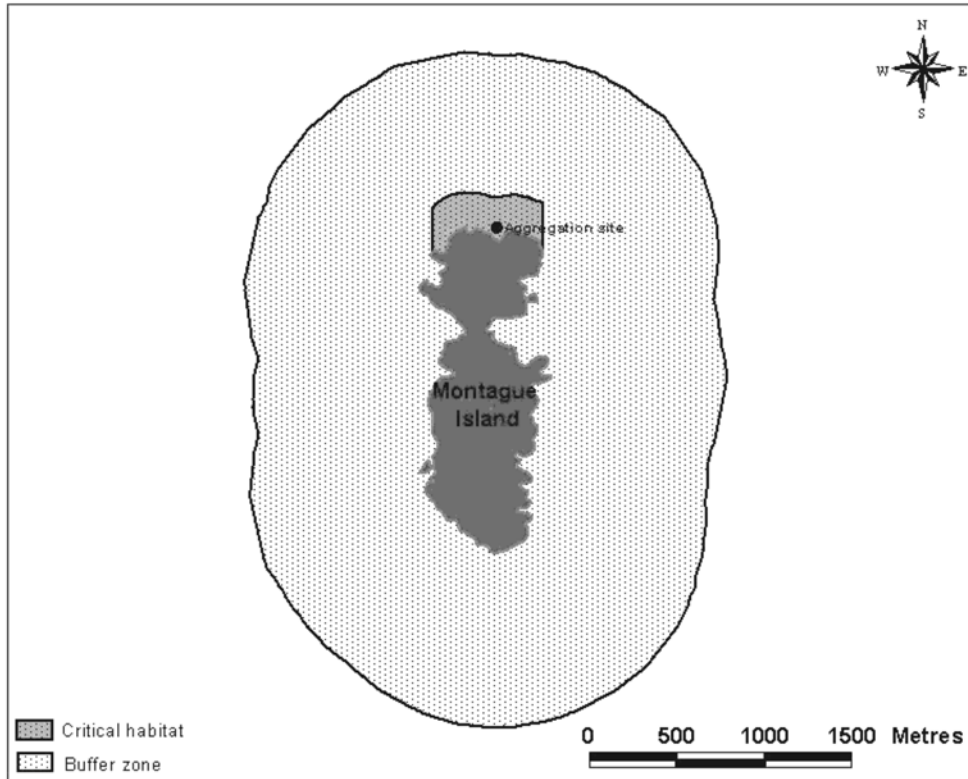
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Map 7—Magic Point



Map 8—Montague Island

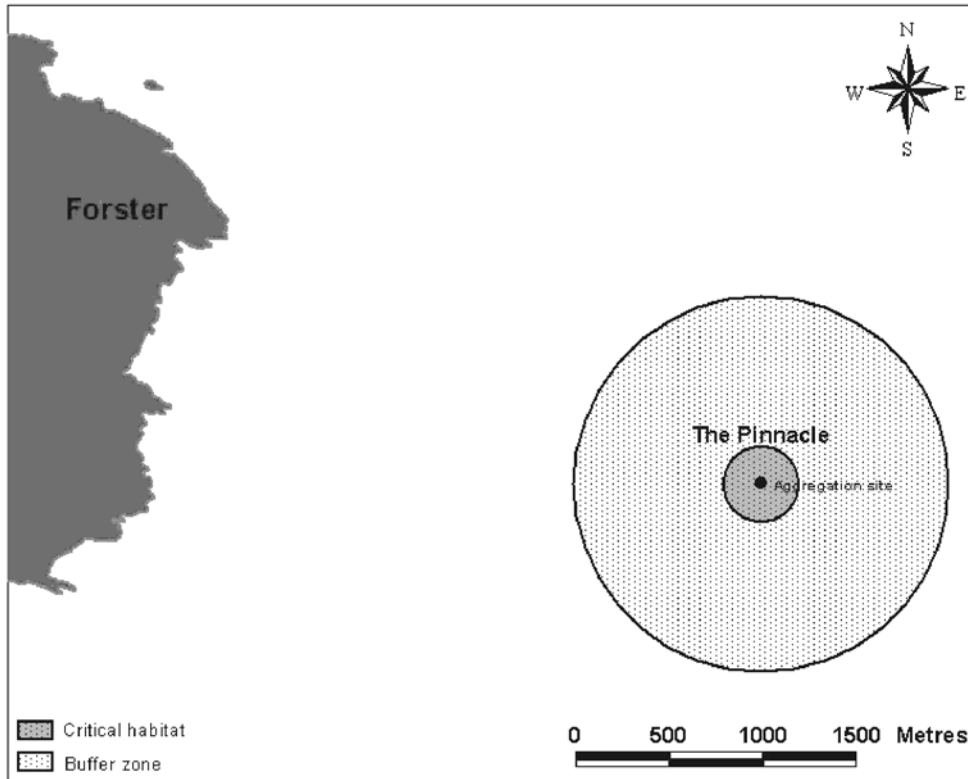


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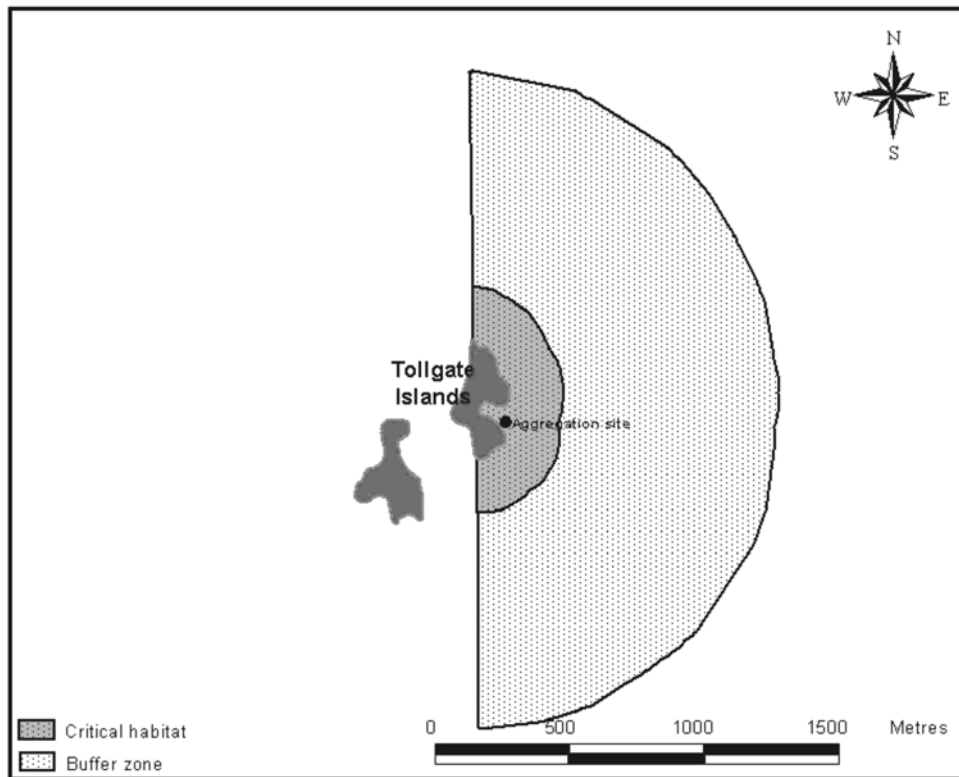
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Map 9—The Pinnacle (GPS position 32° 13.71'S, 152° 36.07'E)



Map 10—Tollgate Islands



[16] Schedule 5 Penalty notice offences

Insert in numerical order of sections in Part 1:

Section 220ZC (1)

\$500

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Schedule 1 Amendments

[17] Schedule 5, Part 2

Insert in numerical order of clauses:

Clause 20A	\$500
Clause 340B	\$500
Clause 340C	\$500
Clause 340D	\$500

BY AUTHORITY
