



New South Wales

Marine Parks Amendment (Cape Byron) Regulation 2006

under the

Marine Parks Act 1997

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Parks Act 1997*.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

BOB DEBUS, M.P.,
Minister for the Environment

Explanatory note

The *Marine Parks Act 1997* and the *Marine Parks Regulation 1999* (the **principal Regulation**) provide for the classification of areas within marine parks for different uses by means of zoning plans. Currently, the principal Regulation provides for four classes of zones in marine parks (sanctuary zones, habitat protection zones, general use zones and special purpose zones) and sets out objects and special provisions applying to those zones.

The object of this Regulation is to provide for a zoning plan for the Cape Byron Marine Park. The zoning plan, which is to be included in Schedule 1 to the principal Regulation, divides the Cape Byron Marine Park into the various zones and contains special provisions regulating and prohibiting the carrying out of certain activities in those zones.

This Regulation also makes a number of other amendments to the principal Regulation.

The amendments include:

- (a) amendments to permit (with Ministerial consent) certain activities in a marine park for the purpose of a traditional use, being a use that satisfies the personal, domestic or non-commercial communal needs of Aboriginal people, and
- (b) changes to the circumstances in which fishing gear may be transported through areas of a marine park in which fishing is prohibited, and
- (c) a new prohibition on contravention of the conditions of use displayed on a Marine Park Authority mooring in a marine park, and

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- (d) a new prohibition on discharging ballast water, drawn from waters outside a marine park, within the marine park, and
- (e) further provision for the cancellation of a Ministerial permit, and
- (f) further provision for the conditions that apply to the use of hauling nets in the habitat protection zone of the Jervis Bay Marine Park, and
- (g) further provision with respect to the anchoring of vessels in the Lord Howe Island lagoon, within the Lord Howe Island Marine Park.

This Regulation also makes some amendments in the nature of law revision.

This Regulation also makes a consequential amendment to the *Fisheries Management (Aquatic Reserves) Regulation 2002*.

This Regulation is made under the *Marine Parks Act 1997*, including sections 15, 16, 17 and 48 (the general regulation-making power) and Schedule 3.

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1 Name of Regulation

This Regulation is the *Marine Parks Amendment (Cape Byron) Regulation 2006*.

2 Commencement

This Regulation commences on 1 May 2006.

3 Amendment of Marine Parks Regulation 1999

The *Marine Parks Regulation 1999* is amended as set out in Schedule 1.

4 Amendment of Fisheries Management (Aquatic Reserves) Regulation 2002

The *Fisheries Management (Aquatic Reserves) Regulation 2002* is amended by omitting Part 4 and Schedule 3.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

set line has the same meaning as it has in the *Fisheries Management (General) Regulation 2002*.

traditional use means a use that satisfies personal, domestic or non-commercial communal needs of Aboriginal people.

[2] Clause 7 Protection of animals, plants and habitat in sanctuary zone

Insert “, traditional use” after “public health” in clause 7 (2).

[3] Clause 9A

Omit the clause. Insert instead:

9A Fishing not permitted from moorings

A person must not take, or attempt to take, fish from a mooring, or a vessel attached to a mooring, in the sanctuary zone of a marine park.

Maximum penalty: 100 penalty units.

[4] Clause 11 Protection of animals, plants and habitat in habitat protection zone

Insert “, traditional use” after “public health” in clause 11 (2).

[5] Clause 15 Protection of animals, plants and habitat in general use zone

Insert “, traditional use” after “public health” in clause 15 (2).

[6] Clause 16 Limited fishing activities in general use zone

Insert “, traditional use” after “public health” in clause 16 (4).

[7] Clause 18A Protection of animals, plants and habitat in special purpose zone

Insert “, traditional use” after “public health” in clause 18A (2).

[8] Clause 18A (3)

Omit the subclause.

[9] Clause 18B Limited fishing activities

Insert “, traditional use” after “public health” in clause 18B (3).

[10] Clause 18B (4)

Omit the subclause.

[11] Clause 19 Possession of animals or plants taken illegally or of equipment used to take animals or plants

Omit clause 19 (3) (a) and (b). Insert instead:

- (a) if the equipment concerned was fishing gear—that the fishing gear was being transported to any place where the person could lawfully use the equipment to take fish and was in the authorised state, or
- (b) if the equipment concerned was not fishing gear—that the equipment was being transported to any place where the person could lawfully use the equipment to take animals or plants, and was in a state in which it could not have been used to take animals or plants, or

[12] Clause 19 (4)

Insert after clause 19 (3):

- (4) For the purposes of subclause (3) (a), the *authorised state* is:
 - (a) in the case of a fishing line—no part of the line was immersed in the waters of the marine park and no hook was baited, or
 - (b) in the case of a fishing net—no part of the net was immersed in the waters of the marine park, or
 - (c) in the case of fishing gear not referred to in paragraph (a) or (b)—the gear was stowed away.

[13] Clause 20 Protection of marine park moorings, buoys, signs and facilities

Omit clause 20 (2). Insert instead:

- (2) A person must not contravene the conditions of use displayed on a mooring in a marine park that is provided by or on behalf of the Authority.

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[14] Clause 20B

Insert after clause 20A:

20B Discharge from vessels

A person must not discharge ballast water, drawn from waters outside a marine park, within the marine park.

Maximum penalty: 100 penalty units.

[15] Clause 32L Cancellation of permit

Insert after clause 32L (1) (f):

- (f1) the carrying out of the activity to which the permit relates did not commence within the period of 120 days dating from the date of the grant of the permit,

[16] Schedule 1 Zoning plans for marine parks

Omit the definition of *set line* from clause 1 (1) of Division 1 of Part 1.

[17] Schedule 1, Part 1, Division 2, heading

Omit “**Zone**”. Insert instead “**zone**”.

[18] Schedule 1, Part 1, Division 4, heading

Omit “**Use Zone**”. Insert instead “**use zone**”.

[19] Schedule 1, Part 2, Division 1

Omit the definition of *set line* from clause 1 (1).

[20] Schedule 1, Part 2, Division 2, clause 2

Omit “35°04’43”S, 150°46’11”E” from the matter relating to Groper Coast.

Insert instead “35°04’44”S, 150°46’15”E”.

[21] Schedule 1, Part 2, Division 3, clause 6 (2) (a) and (a1)

Omit clause 6 (2) (a). Insert instead:

- (a) the person is the holder of:
- (i) a permit issued under section 37 of the *Fisheries Management Act 1994* that expressly permits commercial hauling at a location that is in the habitat protection zone and the person was first issued with a permit of that kind within 12 months after 1 October 2002, and

- (ii) a current commercial fishing licence endorsed for the taking of fish in the ocean hauling fishery under the *Fisheries Management Act 1994*, or
- (a1) the person is a member of the crew of a boat, licensed under Division 2 of Part 4 of the *Fisheries Management Act 1994*, who takes fish as an employee or agent of the master of the boat and the master of the boat is a person referred to in paragraph (a), and

[22] Schedule 1, Part 2, Division 3, clause 6 (3) (a) and (a1)

Omit clause 6 (3) (a). Insert instead:

- (a) the person is the holder of:
 - (i) a permit issued under section 37 of the *Fisheries Management Act 1994* that expressly permits gar fishing at a location that is in the habitat protection zone and the person was first issued with a permit of that kind within 12 months after 1 October 2002, and
 - (ii) a current commercial fishing licence endorsed for the taking of fish in the ocean hauling fishery under the *Fisheries Management Act 1994*, or
- (a1) the person is a member of the crew of a boat, licensed under Division 2 of Part 4 of the *Fisheries Management Act 1994*, who takes fish as an employee or agent of the master of the boat and the master of the boat is a person referred to in paragraph (a), and

[23] Schedule 1, Part 2, Division 4, heading

Omit “Use Zone”. Insert instead “use zone”.

[24] Schedule 1, Part 2, Division 5, heading

Omit “Purpose Zone”. Insert instead “purpose zone”.

[25] Schedule 1, Part 3, Division 2, clause 4

Insert at the end of the clause:

- (d) anywhere within 250 metres of a point at the mean high water mark on the coast of Lord Howe Island near the navigational marker trees for Erscotts Passage at 31°32.882'S, 159°04.476'E.

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[26] Schedule 1, Part 3, Division 8, clause 18

Insert at the end of the clause:

- (2) This clause does not prohibit a person from anchoring a vessel that is less than 10 metres long at the following locations:
 - (a) within the North Passage or South Passage, provided that the vessel is anchored at a location where the water depth exceeds 3 metres at low tide height,
 - (b) within 50 metres of the mean high water mark along the northern coast of Blackburn Island between the westernmost extent of that island at 31°32.089'S, 159°03.490'E and the easternmost extent of that island at 31°32.089'S, 159°03.661'E,
 - (c) within 50 metres of the mean high water mark at a point on the coast of Lord Howe Island at the boat launching ramp at 31°31.356'S, 159°03.468'E,
 - (d) within 250 metres of a point at the mean high water mark on the coast of Lord Howe Island near the navigational marker trees for Erscotts Passage at 31°32.882'S, 159°04.476'E.

[27] Schedule 1, Part 3, Division 8, clause 21

Omit the clause.

[28] Schedule 1, Part 3, Division 8, clause 22

Omit “vessels” from clause 22 (2). Insert instead “vehicles”.

[29] Schedule 1, Part 4

Insert after Part 3:

Part 4 Cape Byron Marine Park Zoning Plan

Note. The GPS coordinates used in this Part to describe the boundaries of the zones of the Cape Byron Marine Park are given in degrees and decimal minutes using the Geocentric Datum of Australia 1994 (GDA 94).

Division 1 Preliminary

1 Definitions

In this Part:

extensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

hand held line has the same meaning as it has in clause 12 of this Regulation.

intensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

landing net has the same meaning as it has in clause 12 of this Regulation.

map means a map set out in Division 10.

marine park means the Cape Byron Marine Park as described in Part 2 of the Proclamation made under sections 6 and 7 of the Act and published in Gazette No 189 on 25 October 2002 at page 9060.

regulatory authority means each of the following:

- (a) the council of an area (within the meaning of the *Local Government Act 1993*) that adjoins the marine park,
- (b) the Department of Primary Industries,
- (c) the Department of Environment and Conservation,
- (d) the Department of Planning,
- (e) NSW Police,
- (f) the Waterways Authority,
- (g) the Department of Lands.

scoop net has the same meaning as it has in clause 12 of this Regulation.

spear gun includes a spear, bow and arrow or other similar device.

table means a table set out in Division 11.

tidal lands means any area of land that is covered from time to time by tidal waters, and that is above the lowest astronomical tide level.

tidal waters means any area of waters of the sea or subject to tidal influence.

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Division 2 Sanctuary zones

2 Description of sanctuary zones

The sanctuary zones of the marine park are comprised of the following areas:

Byron Bay (Map 1)

From point 1A on Tyagarah Beach, approximately 2 kilometres south of the Brunswick River southern training wall at the intersection of the mean high water mark and 28°33.376'S latitude, then due east approximately 100 metres to point 1B at 28°33.376'S, 153°33.601'E, then following the coastline generally north at 100 metres seaward from the mean high water mark to the northern boundary of the marine park at point 1C at 28°32.251'S, 153°33.538'E, then following the northern boundary of the marine park due east approximately 825 metres to point 1D at 28°32.251'S, 153°34.045'E, then generally in a south-easterly direction in a direct line of sight with the Cape Byron Lighthouse approximately 8.8 kilometres to point 1E at 28°36.337'S, 153°36.833'E, then due east approximately 7.1 kilometres to point 1F at 28°36.337'S, 153°41.207'E at the eastern boundary of the marine park, then following the marine park boundary generally south approximately 4.7 kilometres to point 1G at 28°38.780'S, 153°41.690'E, then due west approximately 1.7 kilometres to point 1J at 28°38.780'S, 153°40.683'E, then due north approximately 885 metres to point 1K at 28°38.313'S, 153°40.683'E, then due west approximately 3.9 kilometres to point 1L at Cape Byron, in line with the Cape Byron Lighthouse, at the intersection of the mean high water mark and 28°38.313'S latitude, then following the mean high water mark generally north to point 1A, as shown on map 1, but not including the Cape Byron, Little Wategos Beach, Main Beach, Belongil Beach, Tyagarah Beach or Wilsons Reef and Bait Reef habitat protection zones as described in Division 3.

Marshalls Creek (Map 2)

The whole of the tidal waters and tidal lands to the mean high water mark of Marshalls Creek, including all its creeks, bays and tributaries, upstream of a line (being the junction of the Brunswick River and Marshalls Creek) bearing 135° from point 2A (at the intersection of the mean high water mark on the north-western bank of Marshalls Creek and 153°32.772'E longitude), to the intersection of the line with the mean high water mark on the south-eastern bank of Marshalls Creek, as shown on map 2, but not including the following:

- (i) the tidal waters and tidal lands to the mean high water mark of the stretch of Marshalls Creek that is both:
 - (A) upstream of a line bearing due west from point 2B, at the intersection of the mean high water mark on the eastern bank and 28°30.665'S latitude, approximately 250 metres south of the New Brighton Post Office, to the intersection of the line with the mean high water mark on the western bank, and
 - (B) downstream of a line bearing 045° from point 2C, at the intersection of the mean high water mark and 28°30.553'S latitude at the western end of Casons Lane, to the intersection of the line with the mean high water mark on the eastern bank,
- (ii) the tidal waters and tidal lands to the mean high water mark of Billinudgel Creek (Capricornia Canal) upstream of a line (being the line of the upstream edge of the North Ocean Shores bridge) bearing generally north-west from point 2D, at the intersection of the mean high water mark on the southern bank and 153°32.503'E longitude, to point 2E, at the intersection of the mean high water mark on the northern bank and 153°32.496'E longitude,
- (iii) special purpose zone 2 (Marshalls Creek Oyster Leases), as described in Division 4.

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Simpsons Creek (Map 2)

The whole of the tidal waters and tidal lands to the mean high water mark of Simpsons Creek, including all its creeks, bays and tributaries, upstream of a line bearing due east from point 2F, at the intersection of 28°32.967'S latitude and the mean high water mark on the western bank, to the intersection of the line with the mean high water mark on the eastern bank, located near the Brunswick Heads Bowling Club, as shown on map 2.

Broken Head (Map 4)

From point 4A at the northern end of Kings Beach at the intersection of the mean high water mark and 28°42.528'S latitude, then due east approximately 215 metres to point 4B at 28°42.528'S, 153°37.184'E, then due north approximately 640 metres to point 4C at 28°42.181'S, 153°37.184'E (which is approximately 200 metres north of Cocked Hat Rocks), then due east approximately 1.2 kilometres to point 4D at 28°42.181'S, 153°37.923'E, then generally south south-west approximately 2.7 kilometres to point 4E at 28°43.621'S, 153°37.578'E, then due west approximately 945 metres to point 4F, located approximately 100 metres seaward from the mean high water mark at the south-eastern extremity of Jews Point, at 28°43.621'S, 153°36.997'E, then following the shoreline generally north at 100 metres seaward from the mean high water mark to point 4G at 28°43.315'S, 153°37.177'E, then due west approximately 100 metres to point 4H located approximately 100 metres north of the easternmost rock outcrop at Snapper Rock, at the intersection of the mean high water mark and 28°43.315'S latitude, then following the mean high water mark generally north to point 4A, as shown on map 4.

The Moat/Bream Hole (Map 5)

From point 5A on the southern side of the Lennox Head boat channel at the intersection of the mean high water mark and 28°47.962'S latitude, then following the southern side of the boat channel generally east approximately 160 metres to point 5B at 28°47.932'S, 153°35.847'E, then generally south south-east to point 5C at the intersection of the mean high water mark and 153°35.924'E longitude then generally north, following the shoreline at the mean high water mark to point 5A, as shown on map 5 but not including special purpose zone 5 (Lennox Head).

Lennox Head (Map 5)

From point 5D at the intersection of the mean high water mark and 153°36.129'E longitude, then due north approximately 100 metres to point 5E at 28°48.264'S, 153°36.129'E, then following the shoreline for approximately 500 metres generally north-west at 100 metres seaward from the mean high water mark to point 5F at 28°48.116'S, 153°35.974'E, then generally north to point 5G at 28°47.931'S, 153°35.908'E, then generally north approximately 590 metres, to point 5H at 28°47.622'S, 153°35.830'E, approximately 235 metres seaward from the mean high water mark, then due east approximately 1.3 kilometres to point 5I at 28°47.622'S, 153°36.598'E, then generally south south-west approximately 1.8 kilometres to point 5J at the intersection of the mean high water mark and 28°48.571'S latitude (being the intersection of the mean high water mark and the southern boundary of the marine park), then generally north-west following the mean high water mark to point 5D, as shown on map 5.

3 Fish cleaning

- (1) A person must not clean any fish or any fishing gear while in a sanctuary zone of the marine park except at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.
- (2) This clause does not prohibit the cleaning of fish or fishing gear while on a vessel with the consent of the relevant Ministers.

4 Vessels not to be anchored at certain sites in sanctuary zone

- (1) This clause applies despite clause 9 of this Regulation.
- (2) A person may anchor a vessel in a sanctuary zone if:
 - (a) neither the anchor nor the vessel are within 700 metres of the trigonometrical station on Julian Rocks, and
 - (b) no part of the vessel (including the vessel's anchor and anchor line) is touching a reef, and
 - (c) anchoring the vessel in such a place would not contravene any provision of this Regulation other than clause 9.
- (3) A person may anchor a vessel in a sanctuary zone if such anchoring is permitted by a permit issued under Part 3A of this Regulation to authorise the carrying out of an activity referred to in clause 23, 24 or 26 (1) (d) of this Regulation.

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5 Speed restrictions

- (1) A person must not operate a vessel within 200 metres of the trigonometrical station on Julian Rocks at a speed exceeding 4 knots.
- (2) It is a defence to a prosecution for an offence under subclause (1) if the person charged satisfies the court that the operation of the vessel at the speed the vessel was used at was in an emergency and was necessary to protect life or property.
- (3) This clause does not apply to an officer or employee of a regulatory authority operating a vessel in the course of the regulatory authority's business.

Division 3 Habitat protection zones

6 Description of habitat protection zones

The habitat protection zones of the marine park are comprised of the following areas:

Brunswick River (Map 2)

The whole of the tidal waters and tidal lands to the mean high water mark of the Brunswick River, including its creeks, bays and tributaries, as shown on map 2, but not including:

- (i) the Marshalls Creek or Simpsons Creek sanctuary zone, as described in Division 2, or
- (ii) special purpose zone 1 (Brunswick River Boat Harbour) or 2 (Marshalls Creek Oyster Leases), as described in Division 4.

Brunswick River Offshore (Map 2)

From point 2G, approximately 925 metres from the easternmost point of the Brunswick River northern training wall, on the northern boundary of the marine park at 28°32.251'S, 153°34.045'E, then due east approximately 3.3 kilometres to point 2H at 28°32.251'S, 153°36.104'E, then due south approximately 5.6 kilometres to point 2I at 28°35.269'S, 153°36.104'E, then generally north-west approximately 6.5 kilometres to point 2G, as shown on map 2.

Tyagarah Beach (north) (Map 2)

From point 2J on Tyagarah Beach, approximately 2 kilometres south of the Brunswick River southern training wall at the intersection of the mean high water mark and 28°33.376'S latitude, then due east approximately 100 metres to point 2K at 28°33.376'S, 153°33.601'E, then following the coastline generally north at 100 metres seaward from the mean high water mark to the northern boundary of the marine park to point 2L at 28°32.251'S, 153°33.538'E, then due west to the easternmost point of the Brunswick River northern training wall to point 2M at the intersection of the mean high water mark and 28°32.251'S latitude, then generally south, adjoining the Brunswick River habitat protection zone (as described in this Division), and following the mean high water mark to point 2J, as shown on map 2.

Grays Lane (Map 2)

From point 2N, approximately 2 kilometres north of the Grays Lane access on Tyagarah Beach, at the intersection of the mean high water mark and 28°35.277'S latitude, due east approximately 100 metres to point 2O at 28°35.277'S, 153°34.126'E, then generally south approximately 4.1 kilometres at 100 metres seaward from the mean high water mark to point 2P at 28°37.209'S, 153°35.298'E, then due west approximately 100 metres to point 2Q at the intersection of the mean high water mark and 28°37.209'S latitude, then following the mean high water mark generally north to point 2N, as shown on map 2.

Belongil Beach, Main Beach and Clarkes Beach (Map 3)

From point 3A, approximately 500 metres south of Belongil Creek at the intersection of the mean high water mark and 28°37.776'S latitude, due east approximately 100 metres to point 3B at 28°37.776'S, 153°35.792'E, then generally south-east approximately 3 kilometres at 100 metres seaward of the mean high water mark to point 3C at 28°38.399'S, 153°37.437'E, then due south approximately 100 metres to point 3D at the intersection of the mean high water mark and 153°37.437'E longitude, then following the mean high water mark generally north-west to point 3A, as shown on map 3.

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Cape Byron (Map 3)

From point 3E on the western rocky shore of Little Wategos Beach, at the intersection of the mean high water mark and 153°38.180'E longitude, then due north approximately 100 metres to point 3F at 28°37.999'S, 153°38.180'E, then generally east and then generally south around Cape Byron at 100 metres seaward from the mean high water mark for approximately 830 metres to point 3G at 28°38.179'S, 153°38.348'E, then due west approximately 100 metres to the easternmost point of Cape Byron to point 3H at the intersection of the mean high water mark and 28°38.179'S latitude, then generally north and then generally west along the mean high water mark to point 3E, as shown on map 3.

Wilson's Reef and Bait Reef (Map 3)

From point 3I at 28°37.516'S, 153°36.296'E, then due east approximately 1.3 kilometres to point 3J at 28°37.516'S, 153°37.093'E, then due south approximately 500 metres to point 3K at 28°37.783'S, 153°37.093'E, then due west approximately 1.3 kilometres to point 3L at 28°37.783'S, 153°36.296'E, then due north to point 3I, as shown on map 3.

Mackerel Boulder (Map 3)

From point 3M at 28°36.337'S, 153°36.833'E, then generally north-east for approximately 1.7 kilometres to point 3N at 28°35.900'S, 153°37.708'E, then generally south-east approximately 1.7 kilometres to point 3O at 28°36.337'S, 153°38.589'E, then due west approximately 2.9 kilometres to point 3M, as shown on map 3.

Cape Byron Offshore (Map 1)

From point 1G at 28°38.780'S, 153°41.690'E, generally south approximately 1.5 kilometres following the boundary of the marine park to point 1H at 28°39.576'S, 153°41.466'E, then due west approximately 1.3 kilometres to point 1I at 28°39.576'S, 153°40.683'E, then due north approximately 1.5 kilometres to point 1J at 28°38.780'S, 153°40.683'E, then due east approximately 1.7 kilometres to point 1G, as shown on map 1.

Tallow Beach (Map 1)

From point 1L, in line with the Cape Byron Lighthouse, at the intersection of the mean high water mark and 28°38.313'S latitude, then due east approximately 1.1 kilometres to point 1M at 28°38.313'S, 153°38.877'E, then generally south south-west approximately 7.3 kilometres to point 1N at 28°42.181'S, 153°37.923'E, then due west approximately 1.2 kilometres to point 1O, approximately 540 metres seaward from the mean high water mark and approximately 200 metres north of Cocked Hat Rocks at 28°42.181'S, 153°37.184'E, then due south approximately 640 metres to point 1P at 28°42.528'S, 153°37.184'E then due west approximately 215 metres to the northern point of Kings Beach at point 1Q at the intersection of the mean high water mark and 28°42.528'S latitude, then following the mean high water mark generally north along Tallow Beach to point 1L, as shown on map 1.

Seven Mile Beach (Map 1)

From point 1R, approximately 100 metres north of the easternmost rock outcrop at Snapper Rock, at the intersection of the mean high water mark and 28°43.315'S latitude, then due east approximately 100 metres to point 1S at 28°43.315'S, 153°37.177'E, then following the shoreline generally south at 100 metres seaward from the mean high water mark to point 1T at 28°43.621'S, 153°36.997'E, then due east approximately 945 metres to point 1U at 28°43.621'S, 153°37.578'E, then generally south south-west approximately 7.6 kilometres to point 1V at 28°47.622'S, 153°36.598'E, then due west approximately 1.3 kilometres to point 1W at 28°47.622'S, 153°35.830'E, then generally south approximately 590 metres to point 1X at 28°47.931'S, 153°35.908'E, then generally west approximately 160 metres along the southern boundary of the Lennox Head boat channel to point 1Y at the intersection of the mean high water mark and 28°47.962'S latitude, then following the mean high water mark generally north along Seven Mile Beach to point 1R, as shown on map 1.

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Lennox Head Boulder Foreshore (Map 5)

From point 5D at the intersection of the mean high water mark and 153°36.129'E longitude, then due north approximately 100 metres to point 5E at 28°48.264'S, 153°36.129'E, then following the shoreline for approximately 500 metres generally north-west at 100 metres seaward from the mean high water mark to point 5F at 28°48.116'S, 153°35.974'E, then generally north to point 5G at 28°47.931'S, 153°35.908'E, then due west approximately 100 metres to point 5B at 28°47.932'S, 153°35.847'E, then generally south approximately 390 metres along the eastern margin of the oceanic lagoon (the Moat) to point 5C at the intersection of the mean high water mark and 153°35.924'E longitude, then generally south-east along the mean high water mark to point 5D, as shown on map 5.

7 Taking of certain plants permitted

- (1) A person may take a plant of a species listed in table A, by hand or using a knife, a spade, a fork or a pump, for recreational purposes, in all habitat protection zones other than Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore.
- (2) A person may take a plant of a species listed in table A, by hand or using a knife, a spade, a fork or a pump, for commercial purposes, but only in the Grays Lane or Seven Mile Beach habitat protection zone.
- (3) This clause applies despite clause 11 of this Regulation.

Note. Clause 11 of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in a habitat protection zone except with the consent of the relevant Ministers.

8 Permitted fishing activities

Note. Clause 12 of this Regulation makes it an offence to take or attempt to take fish in a habitat protection zone unless the person is engaging in a permitted fishing activity referred to in that clause. A permitted fishing activity includes the taking of fish by a method that is permitted by the zoning plan for a marine park. This clause sets out such permitted fishing activities (in addition to those described in clause 12).

- (1) Clause 12 (1) of this Regulation (relating to permitted fishing activities) applies to the habitat protection zone of the marine park subject to the provisions of this Part. Accordingly, that subclause is not to be construed as authorising any fishing activity that would contravene this clause.

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- (2) Subject to clause 9 of this Part, the following fishing activities are permitted in a habitat protection zone of the marine park:

(a) **Netting—general**

The taking, other than in the Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore habitat protection zone of the marine park, of any fish of a kind that may lawfully be taken in the habitat protection zone by use of one of the following nets, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*:

- (i) push or scissors net (prawns),
- (ii) hoop or lift net,
- (iii) spanner crab net,
- (iv) submersible lift net (bait), but only if it is used to take fish for use as bait (and not for the purposes of sale).

(b) **Haul netting in part of Seven Mile Beach habitat protection zone**

The taking, in the part of the Seven Mile Beach habitat protection zone between Byron Street at Lennox Head and Jews Point, of any fish of a kind that may lawfully be taken in the habitat protection zone by use of one of the following nets, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*:

- (i) hauling net (general purpose),
- (ii) garfish net (hauling),
- (iii) pilchard, anchovy and bait net (hauling).

(c) **Fish and lobster trapping**

The taking of fish by use of a fish trap or lobster trap in all habitat protection zones other than Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore.

(d) **Eel and crab trapping**

The taking of fish by use of an eel trap or crab trap in all habitat protection zones other than Mackerel Boulder, Wilsons Reef and Bait Reef, Lennox Head Boulder Foreshore or those parts of Marshalls Creek or Simpsons Creek that are part of the Brunswick River habitat protection zone.

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(e) **Collecting**

The taking of species listed in table B, by hand or using a knife, a spade, a fork or a pump, for recreational purposes, in all habitat protection zones other than Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore.

The taking of species listed in table B, by hand or using a knife, a spade, a fork or a pump, for commercial purposes, but only in the Grays Lane or Seven Mile Beach habitat protection zone.

Note. The taking of fish in a habitat protection zone of the marine park is subject to the provisions of the *Fisheries Management Act 1994* and the regulations under that Act. Part 3 of the *Fisheries Management (General) Regulation 2002* also sets out requirements in relation to the lawful use of fishing gear such as traps and nets.

9 Prohibited fishing activities

Note.

- 1 Clause 12 (2) of this Regulation makes it an offence to take or attempt to take fish while in the habitat protection zone unless the person complies with any restrictions imposed on that activity by the zoning plan for the marine park. This clause imposes such restrictions.
 - 2 Clause 12 (3) of this Regulation provides that a person does not commit an offence under clause 12 for anything done with the consent of the relevant Ministers.
- (1) A person must not, while in a habitat protection zone of the marine park, take or attempt to take:
 - (a) any fish the harming of which is prohibited under the *Fisheries Management Act 1994*, or
 - (b) any fish of a species not listed in table B.
 - (2) A person must not, while in a habitat protection zone of the marine park, take or attempt to take any species of shark or ray (Class Chondrichthyes).
 - (3) A person must not, while in the Wilsons Reef and Bait Reef habitat protection zone of the marine park, take or attempt to take any fish of a species not listed in table C.
 - (4) A person must not, while in the Mackerel Boulder habitat protection zone between 1 May and 31 December in any year (both dates inclusive), take or attempt to take fish.

- (5) A person must not, while in the Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore habitat protection zone of the marine park take or attempt to take fish by the use of a net (other than by the use of a landing net and only if such use of the landing net is lawful under the *Fisheries Management Act 1994*).
- (6) A person must not, while in the Mackerel Boulder, Wilsons Reef and Bait Reef or Lennox Head Boulder Foreshore habitat protection zone, take, or attempt to take, a fish by hand or using a knife, a spade, a fork or a pump.
- (7) A person must not, while in any habitat protection zone in the marine park except the Grays Lane or Seven Mile Beach habitat protection zone, take, or attempt to take, a fish by hand or using a knife, a spade, a fork or a pump, for commercial purposes.
- (8) A person must not, while in the Brunswick River, Tyagarah Beach (north), Belongil Beach, Main Beach and Clarkes Beach, or Lennox Head Boulder Foreshore habitat protection zone, take or attempt to take fish by use of a spear gun.

10 Aquaculture

Despite clause 13 of this Regulation, aquaculture is not permissible in the habitat protection zone of the marine park, except extensive aquaculture of shellfish.

Division 4 Special purpose zones

11 Description of special purpose zones

The special purpose zones of the marine park are comprised of the following areas:

Special purpose zone 1 (Brunswick River Boat Harbour) (Map 2)

Lot 1, Deposited Plan 811063, being approximately 1 kilometre from the mouth of the Brunswick River, as shown on map 2.

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Special purpose zone 2 (Marshalls Creek Oyster Leases) (Map 2)

All oyster leases within Marshalls Creek that:

- (i) were the subject, immediately before the commencement of this Part, of an aquaculture permit issued under the *Fisheries Management Act 1994*, and
- (ii) are bounded by the Marshall's Creek sanctuary zone,

as shown on map 2.

Special purpose zone 3 (Belongil Creek) (Map 3)

The whole of the tidal waters and tidal lands to the mean high water mark of Belongil Creek, including all its creeks, bays and tributaries, as shown on map 3.

Special purpose zone 4 (Tallow Creek) (Map 3)

The whole of the tidal waters and tidal lands to the mean high water mark of Tallow Creek, including all its creeks, bays and tributaries, as shown on map 3.

Special purpose zone 5 (Lennox Head) (Map 5)

The area adjacent to and within 50 metres of the Lennox Head boardwalk, as shown on map 5, but not including The Moat/Bream Hole sanctuary zone.

12 Special purpose zones—objects

- (1) The object of special purpose zone 1 (Brunswick River Boat Harbour) is to provide for the management of port and harbour facilities and boating requirements.
- (2) The object of special purpose zone 2 (Marshalls Creek Oyster Leases) is to provide for the management of aquaculture.
- (3) The object of special purpose zones 3 (Belongil Creek) and 4 (Tallow Creek) is to provide for rehabilitation and traditional use.
- (4) The object of special purpose zone 5 (Lennox Head) is to provide for recreational fishing by disabled persons.

Note. Clauses 18A and 18B of this Regulation create offences relating to the taking or harming of plants, animals, fish and other materials in a special purpose zone.

13 Special purpose zones—fishing

- (1) A person must not take or attempt to take fish in special purpose zone 1 (Brunswick River Boat Harbour) unless the taking of the fish, and the method used to take the fish, is permitted in the Brunswick River habitat protection zone.
- (2) A person must not take or attempt to take fish in special purpose zone 2 (Marshalls Creek Oyster Leases). However, a person may carry out oyster aquaculture in that zone in accordance with a permit issued under the *Fisheries Management Act 1994*.
- (3) A person must not take or attempt to take fish in special purpose zone 3 (Belongil Creek) or 4 (Tallow Creek).
- (4) A person must not take or attempt to take fish in special purpose zone 5 (Lennox Head) unless the person does so with the consent of the relevant Ministers and is, or is accompanying:
 - (a) a disabled person for whose use a mobility parking scheme authority has been issued under Division 2 of Part 6 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, or
 - (b) a disabled person conveyed to the zone by an organisation for whose use a mobility parking scheme authority has been issued under Division 2 of Part 6 of that Regulation, or
 - (c) any other person who is a disabled person within the meaning of that Regulation.

Note. Clause 18B of this Regulation creates an offence of taking or attempting to take fish in contravention of the zoning plan for a marine park. However, a person may obtain the consent of the relevant Ministers to take or attempt to take fish for research, environmental protection, public health, traditional use or public safety purposes.

Division 5 General use zone**14 Description of general use zones**

The general use zone of the marine park is comprised of all parts of the marine park that are not included in a sanctuary zone, a habitat protection zone or a special purpose zone.

15 Fishing permitted

- (1) A person must not take, or attempt to take, fish in the general use zone of the marine park unless the taking of the fish, and the method used to take the fish, is lawful under the *Fisheries Management Act 1994*.

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- (2) This clause is subject to the other provisions of this Regulation. Accordingly, this clause is not to be construed as authorising any fishing activity that would contravene another provision of this Regulation.

Note. Division 6 of this Part sets out some general restrictions on fishing in the marine park. Those provisions apply to the general use zone.

Division 6 General prohibitions

16 Aquaculture

Despite any other provision of this Regulation, intensive aquaculture is not permissible in the marine park.

17 Taking fish or plants for aquarium collection prohibited

- (1) A person must not, while in any part of the marine park, take or attempt to take any fish or plant for aquarium collection purposes.
- (2) A person does not commit an offence in respect of a contravention of subclause (1) if:
- (a) the fish or plant the subject of the charge was taken while in the habitat protection zone or general use zone, and
 - (b) the activity was not carried out for a commercial purpose, and
 - (c) the activity was carried out with the consent of the relevant Ministers.

18 Setlining, droplining, drift lining, estuary mesh netting and purse seine netting

A person must not while in any part of the marine park take, or attempt to take, fish by the following activities:

- (a) use of a set line, dropline or drift line,
- (b) use of an estuary mesh net,
- (c) use of a purse seine net.

Division 7 Species protection

19 Identification of protected species

For the purposes of clause 22A of this Regulation, any species:

- (a) not listed in table B, or
- (b) the harming of which is prohibited under the *Fisheries Management Act 1994*,

is identified as a protected species for the purposes of the marine park.

Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.

Division 8 Domesticated animals

20 Prohibition on domesticated animals

- (1) A person may bring a domesticated animal into the marine park except as provided by subclause (2).
- (2) A person must not bring a domesticated animal into any tidal lands in the marine park if such lands are directly seaward of a nature reserve or national park dedicated or reserved under the *National Parks and Wildlife Act 1974*.
- (3) Despite subclause (2), a person may bring a domesticated animal into any part of the marine park:
 - (a) if the animal is an assistance animal (within the meaning of the *Companion Animals Act 1998*) being used by a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), or
 - (b) if the animal remains confined to a vessel, or
 - (c) if the animal is a horse and the horse is brought into the marine park with the consent of the relevant Ministers.
- (4) This clause applies despite clause 22 of this Regulation.

Note. Clause 22 of this Regulation makes it an offence to bring a domesticated animal into a marine park except with the consent of the relevant Ministers.

- (5) This clause is subject to the provisions of the *Companion Animals Act 1998*.

Note. Sections 14 and 30 of the *Companion Animals Act 1998* prohibit cats and dogs in certain public places.

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Division 9 Use, mooring and anchoring of vessels and vehicles

Note. Clause 27 of this Regulation makes it an offence to use, anchor or moor any motorised vessel or vehicle in a marine park in contravention of the zoning plan for the marine park.

21 Anchoring large vessels

- (1) A person must not anchor a vessel that is longer than 25 metres in the marine park between latitude 28°36.609'S (Julian Rocks) and latitude 28°38.594'S (Cape Byron), except with the consent of the relevant Ministers.
- (2) It is a defence to a prosecution for an offence under clause 27 of this Regulation in respect of a contravention of subclause (1) if the person charged satisfies the court that the anchoring of the vessel was in an emergency and was necessary to protect life or property.

22 Personal watercraft and hovercraft

- (1) A person must not use a personal watercraft or motorised vessel that is a hovercraft in any part of the marine park.
- (2) Subclause (1) does not apply to:
 - (a) an officer or employee of a regulatory authority using the personal watercraft or hovercraft in the course of the regulatory authority's business, or
 - (b) a person carrying out an activity referred to in clause 26 (1) (a), (b), (c) or (d) of this Regulation with the consent of the relevant Ministers.
- (3) It is a defence to a prosecution for an offence under clause 27 of this Regulation in respect of a contravention of subclause (1) if the person charged satisfies the court that the person was in an emergency and the use of the personal watercraft or hovercraft was necessary to protect life or property.

23 Areas in which use of vehicles prohibited

- (1) A person must not use a motorised vehicle in the marine park, except for the purpose of launching and retrieving vessels from designated boat-launching facilities.
- (2) This clause does not apply to or in respect of the following:
 - (a) an authorised vehicle, a police vehicle or an emergency vehicle,
 - (b) a commercial fisher (within the meaning of the *Fisheries Management Act 1994*) lawfully using a vehicle on a beach in connection with his or her fishing activities,
 - (c) a person who has been issued with a permit by the Byron Shire Council authorising the use of a motorised vehicle and who is using the vehicle in accordance with that permit.
- (3) In this clause:
 - (a) a regulatory authority,
 - (b) any other government department or public or local authority,
 - (c) a surf life saving club.

designated boat-launching facility means a facility in the marine park designated by the Authority or another relevant government department or public or local authority as appropriate for boat-launching.

emergency vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

police vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

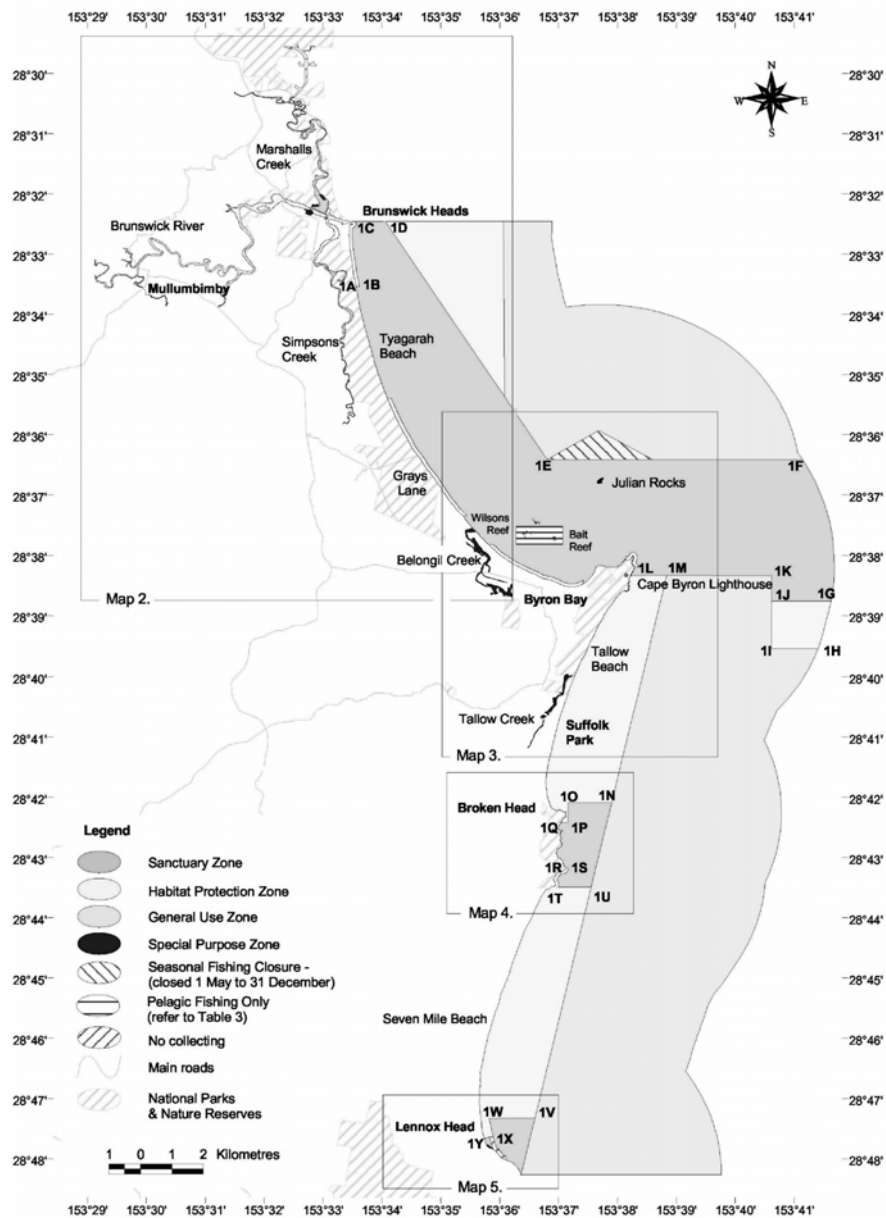
Note. Clause 27 of this Regulation makes it an offence to use any motorised vehicle in a marine park in contravention of the zoning plan for the marine park.

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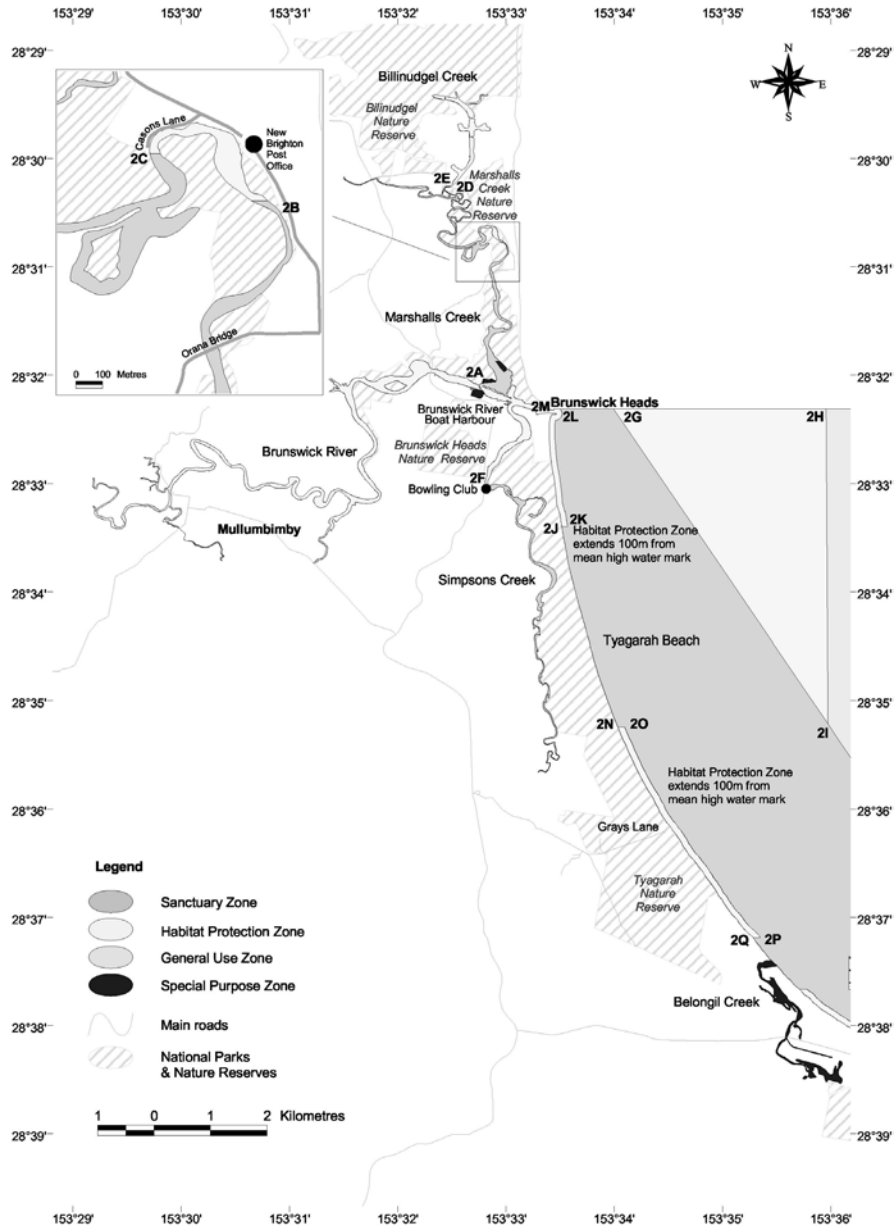
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Division 10 Maps
Map 1 Cape Byron Marine Park



Map 2 Brunswick River and Tyagarah Beach

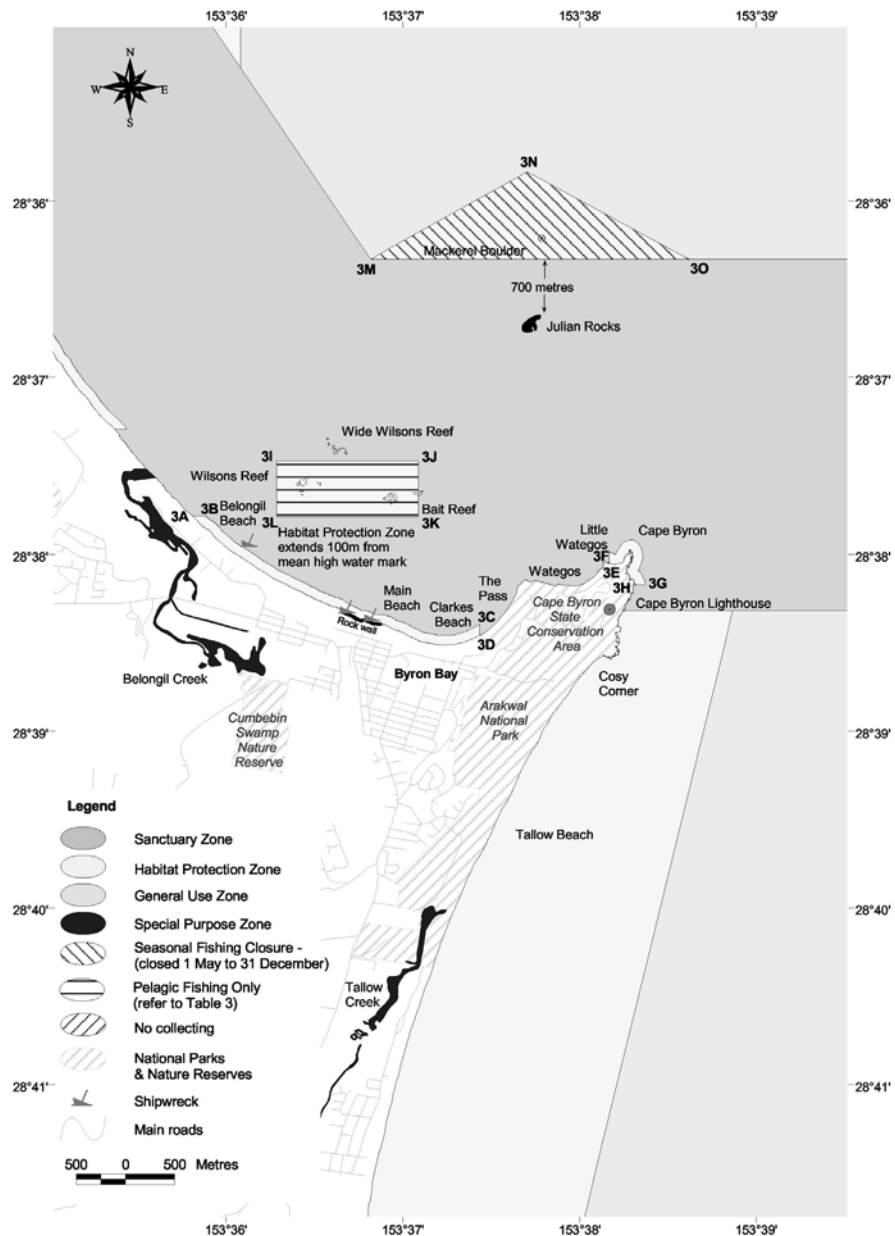


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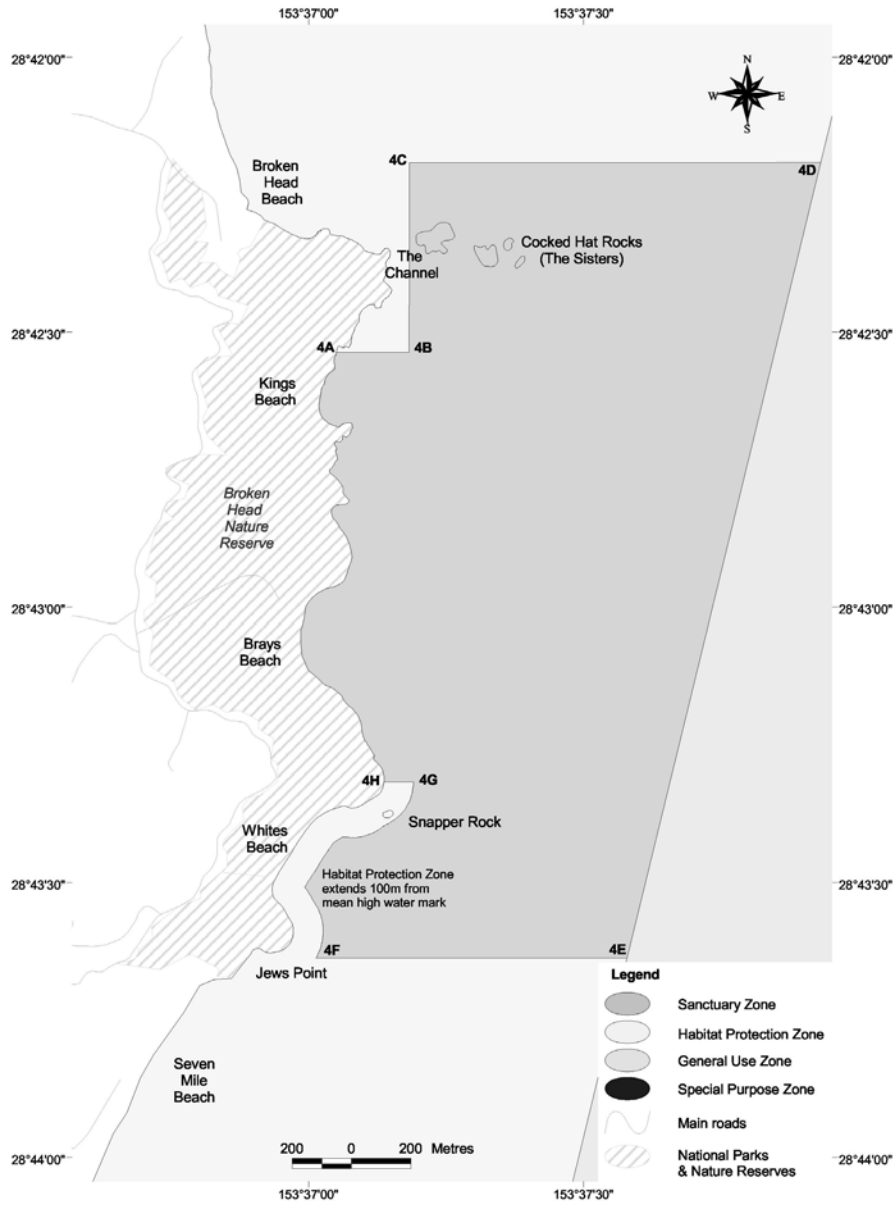
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Map 3 Cape Byron



Map 4 Broken Head

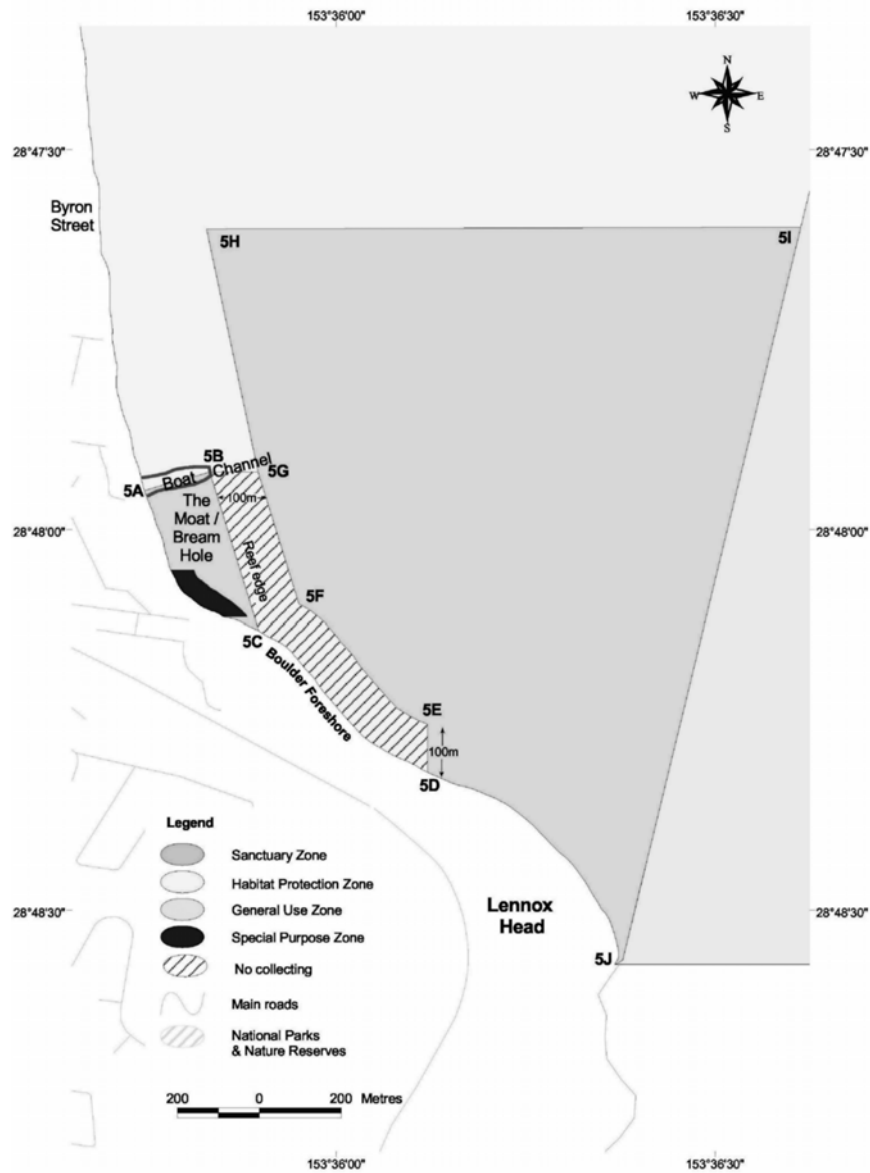


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Map 5 Lennox Head



Note. Map 1 provides an overview of the draft zoning scheme for the Cape Byron Marine Park. Maps 2-5 provide additional detail.

Division 11 Tables
Table A—Plants that may be taken in habitat protection zones

Common name	Class/Family	Species
Sea lettuce	Family Ulvaceae	<i>Ulva lactuca</i>
Bait weed	Family Ulvaceae	<i>Enteromorpha intestinalis</i>

Table B—Fish that may be taken in habitat protection zones

Common name	Class/Family	Species
Finfish	Class Osteichthyes	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Lobster, crayfish	Family Palinuridae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Prawns	Family Penaeidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Squid	Family Sepiidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Pipis	Family Donacidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Rock and beach worms	Family Onuphidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Marine yabbies (nippers)	Family Callianassidae	<i>Callianassa</i> spp.
Mud crabs	Family Grapsidae	<i>Scylla serrata</i>
Blue swimmer crabs	Family Portunidae	<i>Portunus pelagicus</i>
Rock crabs	Family Grapsidae	All species
Spanner crabs	Family Raninidae	<i>Ranina ranina</i>
Oysters	Family Ostreidae	<i>Saccostrea</i> spp. and <i>Crassostrea</i> spp.

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Common name	Class/Family	Species
Turban shell (<i>Googoombull</i>)	Family Turbinadae	<i>Turbo</i> spp.
Abalone	Family Haliotidae	<i>Haliotis rubra</i>
Periwinkles	Family Trochidae	<i>Austrocochlea</i> spp.

Note. Bag and size limits apply and are specified in the *Fisheries Management Act 1994*.

Table C—Fish that may be taken from Wilsons Reef and Bait Reef habitat protection zone

Common name	Family	Species
Mullet	Family Mugilidae	All species
Garfish	Family Hemiramphidae	All species
Sea pike, snook	Family Sphyraenidae	All species
Hardyheads	Family Atherinidae	All species
Mackerels, wahoo, tuna	Family Scombridae	All species
Trevallies, kingfish, scad, etc	Family Carangidae	All species
Pilchards, herring, sprats etc	Family Clupeidae	All species
Cobia	Family Rachycentridae	<i>Rachycentron canadum</i>
Dolphinfish	Family Coryphaenidae	<i>Coryphaena hippurus</i>
Tailor	Family Pomatomidae	<i>Pomatomus saltatrix</i>

Note. Bag and size limits apply and are specified in the *Fisheries Management Act 1994*.

[30] Schedule 2 Penalty notice offences

Insert “(1)” after “20G” under the heading “*Offences created by a provision of the Act*”.

[31] Schedule 2, heading “Offences created by a provision of the Act”

Insert in appropriate order in Columns 1 and 2:

Section 20G (2)	\$500
Section 20H (2)	\$500

[32] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “7 (a)”. Insert instead “7 (1) (a)”.

[33] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “7 (b)”. Insert instead “7 (1) (b)”.

[34] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “7 (c)”. Insert instead “7 (1) (c)”.

[35] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “7 (d)”. Insert instead “7 (1) (d)”.

[36] Schedule 2, heading “Offences created by a provision of this Regulation”

Insert the following in numerical order of provision:

Clause 8A (1)	\$500
Clause 20B	\$200
Clause 24A (b)	\$300
Clause 24A (c)	\$300
Clause 24A (d)	\$300
Clause 32G (2)	\$500

[37] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “9”. Insert instead “9 (1)”.

[38] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “11 (a)”. Insert instead “11 (1) (a)”.

[39] Schedule 2, heading “Offences created by a provision of this Regulation”

Omit “11 (b)”. Insert instead “11 (1) (b)”.

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- [40] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “11 (c)”. Insert instead “11 (1) (c)”.
- [41] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “15 (a)”. Insert instead “15 (1) (a)”.
- [42] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “15 (b)”. Insert instead “15 (1) (b)”.
- [43] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “15 (c)”. Insert instead “15 (1) (c)”.
- [44] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “18A (a)”. Insert instead “18A (1) (a)”.
- [45] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “18A (b)”. Insert instead “18A (1) (b)”.
- [46] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “18A (c)”. Insert instead “18A (1) (c)”.
- [47] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “20 (a)”. Insert instead “20 (1) (a)”.
- [48] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “20 (b)”. Insert instead “20 (1) (b)”.
- [49] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “20 (c)”. Insert instead “20 (1) (c)”.
- [50] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “20 (d)”. Insert instead “20 (1) (d)”.

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- [51] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “20 (e)”. Insert instead “20 (1) (e)”.
- [52] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Insert “(2)” after “20A”.
- [53] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Insert “(1) (a) and (b)” after “22A”.
- [54] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Insert “(a)” after “24A”.
- [55] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “26 (a)”. Insert instead “26 (1) (a)”.
- [56] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “26 (b)”. Insert instead “26 (1) (b)”.
- [57] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “26 (c)”. Insert instead “26 (1) (c)”.
- [58] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit “26 (d)”. Insert instead “26 (1) (d)”.
- [59] **Schedule 2, heading “Offences created by a provision of this Regulation”**
Omit the matter relating to clause 32.