***Target audience****: For all Reef Authority staff and delegates who apply section 5.1, 5.2 or 5.3 of the Great Barrier Reef Marine Park Zoning Plan 2003 in order to provide advice to third parties entering the Great Barrier Reef Marine Park for the purposes under section 5.1, 5.2 or 5.3 of the Great Barrier Reef Marine Park Zoning Plan 2003.*

# Purpose

1. To provide transparent and consistent guidance on the use or entry of the Great Barrier Reef Marine Park (Marine Park) for the purposes under section 5.1, 5.2 and 5.3 of the Great Barrier Reef Marine Park Zoning Plan 2003 (Zoning Plan).

# Definitions

* ‘Managing agencies’ collectively refers to the Great Barrier Reef Marine Park Authority (the Reef Authority) and the Queensland Parks and Wildlife Service & Partnerships (QPWS), which jointly deliver an ongoing Reef Joint Field Management Program (RJFMP) for the Great Barrier Reef Marine Park, the Great Barrier Reef Coast Marine Park and Queensland national parks within the Great Barrier Reef World Heritage Area (see Schedule C to the Great Barrier Reef Intergovernmental Agreement 2015).
* ‘Marine Parks’ refers to the Commonwealth Marine Park (established by the *Great Barrier Reef Marine Park Act 1975* (Cth)) and the adjoining and overlapping State Great Barrier Reef (Coast) Marine Park (established by the *Marine Parks Act 2004* (Qld)).
* ‘Third party’ refers to a person or institution (such as an entity or government agency) other than the ‘Managing agencies’.

# Related documents/ material/ requirements

* [*Great Barrier Reef Marine Park Act 1975* (Cth)](https://www.legislation.gov.au/Series/C2004A01395) (the Act)
* [Great Barrier Reef Marine Park Zoning Plan 2003 (Cth)](https://www.legislation.gov.au/Series/F2005B02402) (the Zoning Plan)
* [Great Barrier Reef Marine Park Regulations 2019 (Cth)](https://www.legislation.gov.au/Details/F2019L00166) (the Regulations)
* [Great Barrier Reef Intergovernmental Agreement 2015](https://www.environment.gov.au/marine/gbr/protecting-the-reef/intergovernmental-agreement) (Intergovernmental Agreement)
* [*Marine Parks Act 2004* (Qld)](https://www.legislation.qld.gov.au/view/pdf/2017-07-03/act-2004-031) (Marine Parks Act)
* [Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004 (Qld)](https://www.legislation.qld.gov.au/view/pdf/2017-09-01/sl-2004-0240) (Marine Park (Great Barrier Reef Coast) Zoning Plan)
* [Section 5.4 of the Zoning Plan guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3547) (Section 5.4 guidelines)
* [*Native Title Act 1993* (Cth)](https://www.legislation.gov.au/Series/C2004A04665) (Native Title Act)
* [Traditional Owner Heritage Assessment guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3241)
* [Aboriginal and Torres Strait Islander Heritage Strategy for the Great Barrier Reef Marine Park](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3425)

## Section 5.1 of the Zoning Plan related:

* [Great Barrier Reef Marine Park Act, Regulations, Zoning Plan and Plans of Management (GBRMPA) Delegations](http://qudos/masterdocumentlist/Docs/Master%20Documents/v4-Delegation-MPA-GBRMP-Act-Regs-Zoning-POMs-2019-03-22.pdf) (GBRMPA Delegations) - Managing agencies staff access only

## Section 5.2 of the Zoning Plan related:

* [*Protection of the Sea (Powers of Intervention) Act 1981*](https://www.legislation.gov.au/Details/C2019C00190)(Cth)
* [*Nature Conservation Act 1992* (Qld)](https://www.legislation.qld.gov.au/view/pdf/2017-07-03/act-1992-020)(Nature Conservation Act)
* [RJFMP Incident Management Framework](http://thedock.gbrmpa.gov.au/sites/FieldManagement/IM/_layouts/DocIdRedir.aspx?ID=FLDMGT-68-1146) (Incident Management Framework)
* [National Plan for Maritime Environmental Emergencies](https://www.amsa.gov.au/marine-environment/national-plan-maritime-environmental-emergencies)
* [Queensland Coastal Contingency Action Plan](https://www.publications.qld.gov.au/dataset/queensland-coastal-contingency-action-plan)

## Section 5.3 of the Zoning Plan related:

* [*Environment Protection and Biodiversity Conservation Act 1999* (Cth)](https://www.legislation.gov.au/Details/C2014C00506) (EPBC Act)
* [Policy on Managing Activities that include the Direct Take of a Protected Species from the Great Barrier Reef Marine Park (Protected Species Policy)](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/593)
* [Permission system policy and guidelines](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/3224)
* [Managing Research in the Great Barrier Reef Marine Park guidelines](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/3227)
* [Activity assessment guidelines: photography, filming and sound recording](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/3236)
* [Nature Conservation (Animals) Regulation 2020 (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2020-0136)
* [Nature Conservation (Protected Areas Management) Regulation 2017 (Qld)](https://www.legislation.qld.gov.au/view/pdf/asmade/sl-2017-0157)

# Guidance

1. The Zoning Plan identifies the types of activities that may occur in each Marine Park zone. Parts 2 to 4 of the Zoning Plan (and Parts 2 and 3 of the Marine Parks (Great Barrier Reef Coast) Zoning Plan) provide that certain activities require written permission from the Reef Authority (Marine Park permission).
2. Part 5 of the Zoning Plan allows for additional purposes for use or entry. In the context of Part 5 of the Zoning Plan, Table 1 provides a cross reference of respective provisions under Marine Park (Great Barrier Reef Coast) Zoning Plan or other relevant Queensland legislation.

Table 1. Part 5 of the Zoning Plan and corresponding provisions in the Marine Park (Great Barrier Reef Coast) Zoning Plan or other relevant Queensland legislation

| **Part 5 of the Zoning Plan – additional purposes for use or entry** | **Corresponding provisions in Marine Park (Great Barrier Reef Coast) Zoning Plan or other Queensland legislation** |
| --- | --- |
| section 5.1 use or entry without permission or notification | Part 2 provides provision for use or entry without permission across the respective zones and references the Zoning Plan |
| section 5.2 use or entry without permission after notification | Part 4, section 90 specifies requirements for entry or use without permission after notification |
| section 5.3 entry to zones for purpose of taking protected species | Part 2 provides provision for use or entry across the respective zones and references the Zoning Plan |
| section 5.4 provision provides for the Reef Authority to undertake management activities, or authorise the undertaking of an activity in the zone, or part of the zone, for the purposes of management | Section 145A and section 145B of the Marine Parks Act provide similar provisions but some limitations exist |

1. Guidance on sections 5.1 to 5.3 of the Zoning Plan are provided in these guidelines. Guidance on section 5.4 of the Zoning Plan is provided in the separate [Section 5.4 guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3547).

| Note – Section 36(1) of the Act states that ‘[w]hile a zoning plan is in force in relation to a zone the Authority shall perform its functions and exercise its powers in relation to the zone in accordance with that plan and not otherwise’. |
| --- |
| Note – The general duty under the Act (in accordance with section 37AA), for a person who uses or enters the Marine Park, to take all reasonable steps to prevent or minimise harm to the environment in the Marine Park that might or will be caused by the person’s use or entry. |

1. An Intergovernmental Agreement between the Commonwealth and Queensland Governments is in place to cooperatively plan, fund and deliver an integrated, strategically planned and co-ordinated RJFMP for the Marine Parks, as well as the Queensland national parks within the Great Barrier Reef World Heritage Area. Part 5 of the Zoning Plan assists, amongst other things, in the delivery of RJFMP activities.

| Note – Section 8(3) of the Act expressly provides that the Reef Authority has power to perform any of its functions (which would include management of the Marine Park), in co-operation with Queensland, a Queensland authority or local governing body in Queensland (e.g. local council). |
| --- |

1. In addition to requirements under Part 5 of the Zoning Plan, other requirements may need to be met before an activity can be undertaken in the Marine Park. For example:
   1. It is important that the Managing agencies ensure that an activity under Part 5 of the Zoning Plan is also consistent with the policy intent of a relevant Plan of Management (PoM). Although activities conducted under Part 5 of the Zoning Plan are allowable in a Plan of Management area, (with the exception of Shoalwater Bay (Dugong) PoM as it was implemented prior to the Zoning Plan), there is the provision in 39ZI of the Act to ensure the Reef Authority must perform its functions and exercise its powers in accordance with a PoM.

| Note – section 39ZI of the Act provides that while a PoM is in force in relation to an area of the Marine Park, a species within the Marine Park or an ecological community within the Marine Park, ‘the Authority must perform its functions and exercise its powers in relation to [the area, species or community] in accordance with that plan and not otherwise’. |
| --- |

* 1. An activity may also require permissions or approvals under other relevant State or other Commonwealth legislation (see guidance for section 5.2 and section 5.3 below).

1. Under the Native Title Act, a future act includes a proposed activity that affects Native Title i.e. an act that extinguishes or that is otherwise wholly or partly inconsistent with the continued existence, enjoyment or exercise of Native Title rights or interests. General guidance regarding Future Act Notifications (FANs) under the Native Title Act and best practice protocols for consulting and involving Traditional Owners through stronger partnerships is provided in the box below, as well as specific guidance under each of the respective sections of Part 5 below.

| **FUTURE ACTS AND TRADITIONAL OWNER INVOLVEMENT**  An activity conducted under section 5.1, 5.2 and 5.3 of the Zoning Plan may be considered a future act under the Native Title Act.  Where the proposed use or entry is a future act that requires notification under the Native Title Act, Traditional Owners must be notified through the Native Title notification system (refer to the [Native Title Tribunal](http://www.nativetitle.org.au/) for authorised contacts where determinations or registered claims are in place or [Queensland Cultural Heritage Register and Database](https://culturalheritage.datsip.qld.gov.au/achris/public/home) for authorised contacts for each coastal area). A Future Act Notification (FAN) is issued by the Managing agencies for a relevant proposed activity.  In addition to a FAN, the Reef Authority expects that relevant Traditional Owners will be consulted by those seeking to undertake the proposed activity directly and early in any process associated with a proposed activity in order to seek Traditional Owner advice on any potential impacts to cultural heritage from a proposed activity. Suitable avoidance and mitigation measures may then be identified as appropriate, and endorsement by the Traditional Owners sought. Following endorsement those measures can be implemented by those undertaking the proposed activity to facilitate protection and conservation of Indigenous heritage values, along with other values, such as biodiversity, social and historic values (refer to the [Traditional Owner Heritage Assessment guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3241); and the [Traditional Owner contact list](http://thedock.gbrmpa.gov.au/sites/Engagement/Documents/Reef%20Traditional%20Owner%20Contact%20List/Reef-Traditional-Owner-Contact-List-June-2018.xlsx) – only Reef Authority access).  Where appropriate, the Reef Authority also expects that relevant Traditional Owners will be involved in the conduct of activities undertaken under Part 5 and have direct influence on the outcome of those activities. Further, Traditional Owners who are directly involved in those activities must have their contribution to the conduct of an activity and any of their Intellectual Property used in or arising from their involvement recognised in any relevant report or publication.  Some activities conducted under sections 5.1, 5.2 and 5.3 of the Zoning Plan may not considered future acts (and therefore not require a FAN) and this is noted in the tables below.  The Managing agencies are increasingly working with Traditional Owners as partners in the management of the Marine Parks to achieve greater environmental, cultural and social outcomes. Many Traditional Owners are directly involved in park management activities, including compliance and monitoring programs. The Managing agencies and Traditional Owners continue to work together to expand and strengthen co-management (refer to the Reef Authority’s [Aboriginal and Torres Strait Islander Heritage Strategy for the Great Barrier Reef Marine Park](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3425) for guiding principles, objectives and relevant actions, as well as Queensland’s [Gurra Gurra Framework](https://www.des.qld.gov.au/our-department/corporate-docs/the-gurra-gurra-framework-2020-2026#:~:text=The%20Gurra%20Gurra%20Framework%20aims%20to%20assist%20the,commitments%20outlined%20in%20our%20own%20agreements%20and%20contracts.) 2020-2026). |
| --- |

## Section 5.1 Use or entry without permission or notification

1. The intent of section 5.1 is to allow for use and entry into a zone without a permission from or notification to the Reef Authority. Such use or entry may be: for the purpose of responding to an emergency, by a Traditional Owner for an activity not involving the taking of plants, animals or marine products for the purposes of Aboriginal or Torres Strait Islander custom or tradition, to perform functions and exercise powers in the Marine Park under the Act, Regulations or a POM, to enforce a law of the Commonwealth or Queensland by a person authorised to enforce that law, or to carry out reconnaissance or surveillance for the Commonwealth or Queensland. However, whilst a notification or permission is not required for entry for any emergency responses, those entering to use the Marine Park should be encouraged to inform the Reef Authority as soon as practicable if there is likely to be a potential impact to the values of the Marine Park.

### Guidance applying section 5.1

1. For section 5.1 of the Zoning Plan to apply, an activity must fall under one of the categories outlined in Table 2 for s 5.1 (a) to (e).

Table 2. Guidance when applying the respective subsections of section 5.1 of the Zoning Plan (including other considerations such as Queensland requirements)

| **subsection** | **guidance including examples of relevant activities** | **Native Title Act and Traditional Owner consultation and involvement** | **other considerations** |
| --- | --- | --- | --- |
| **s 5.1(a)**  *in an emergency…* (refer to the purposes listed under s 5.1(a)(i) – (vi) of the Zoning Plan) | For example, responding to an emergency alert or threat of pollution (such as oil spill/chemical spill), saving human life (such as search and rescue), locating or securing the safety of aircraft/vessels/structure (such as emergency towage of a vessel in distress), emergency repairs to a navigational aid, removal/salvage of a vessel or aircraft that poses a threat to the marine environment or safety.  For action taken under s 5.1(a)(v) ‘to deal with a threat of pollution to the marine environment under Commonwealth law or a national emergency response arrangement in which the Authority participates’, refer to the [National Plan for Maritime Environmental Emergencies](https://www.amsa.gov.au/marine-environment/national-plan-maritime-environmental-emergencies/national-plan-maritime#:~:text=The%20National%20Plan%20for%20maritime%20environmental%20emergencies%20%28National,how%20costs%20might%20be%20attributed%20or%20ultimately%20recovered.) or the [Queensland Coastal Contingency Action Plan](https://www.publications.qld.gov.au/dataset/queensland-coastal-contingency-action-plan/resource/ed2d7b05-2a34-4662-b9b0-b27fa0ca7328) (which includes the waters of the Marine Park).  For action taken under s 5.1(a)(vi) ‘under Commonwealth law, to remove or salvage a vessel or an aircraft…that is wrecked, stranded, sunk or abandoned, and poses a threat to the marine environment or safety’, refer to the direction of the Maritime Emergency Response Commander. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  However, wherever possible and where the Reef Authority has a role in the incident response, relevant Traditional Owners should be informed, consulted and/or involved (also refer to the Incident Management Framework).  Otherwise, Traditional Owner consultation protocols apply as per respective agencies and government departments. | In terms of taking possible compliance related action, consider if the emergency was a preventable emergency where all reasonable steps are being/had been undertaken (including regular maintenance and inspections, and other appropriate risk mitigation protocols) to prevent or minimise harm to the environment of the Marine Parks.  [*Protection of the Sea (Powers of Intervention) Act 1981*](https://www.legislation.gov.au/Details/C2019C00190) (Cth) authorises the Commonwealth to take measures for the purpose of protecting the sea from pollution by oil and other noxious substances discharged from ships, and for related purposes to prevent, mitigate or eliminate grave or imminent danger to the coastline or related interest.  The Australian Maritime Safety Authority coordinates a national pollution prevention and response strategy to protect Australia’s marine environment from pollution caused by shipping and related activities.  Maritime Safety Queensland is responsible for managing Queensland’s coastal and marine environments (including the waters of the Great Barrier Reef World Heritage Area) from pollution caused by shipping and related activities. |
| **s 5.1(b)**  *by a traditional owner for an activity not involving the taking of plants, animals or marine products, for the purposes of Aboriginal and Torres Strait Islander custom or tradition.* | Nothing in the Zoning Plan extinguishes or affects the operation of section 211 of the Native Title Act regardless of which zone the activity is undertaken (refer to section 1.7(4) of the Zoning Plan). | To apply s 5.1(b) a person must be able to assert a right as a Traditional Owner for the area in which the activity is undertaken and that the activity is undertaken under the specific Aboriginal or Torres Strait Islander customs of tradition as observed by that group.  Note that beyond s 5.1(b), an activity involving the taking of plants, animals or marine products, for the purposes of satisfying personal, domestic or non-commercial needs and in exercise or enjoyment of their native title rights and interests is not prohibited: see section 211 of Native Title Act. | Refer to the Section 3 of the Act for Traditional Owner definition.  Also refer to guidance for section 5.3 below on Traditional Use of Marine Resources Agreements (TUMRA) |
| **s 5.1(c)**  *to perform functions and exercise powers under the Act, the Regulations or a plan of management* | Part II of the Act establishes the Great Barrier Reef Marine Park Authority and sets out the functions (section 7 of the Act) and powers (section 8(1) of the Act) of the Reef Authority.  Section 47(1) of the Act allows the Reef Authority to delegate in writing its powers or functions under the Act, ([GBRMPA Delegations](http://qudos/masterdocumentlist/Docs/Master%20Documents/v4-Delegation-MPA-GBRMP-Act-Regs-Zoning-POMs-2019-03-22.pdf)). The powers delegated by this instrument may be sub-delegated to the extent it is permitted by the Act.  Functions of the Reef Authority are, those given to the Reef Authority under the Act or any other Act, and include to provide assistance to other institutions and persons (including to carry out research or investigations), and the power under Section 8 to do anything incidental or conducive to the performance of its functions (such as site visits and surveys).  Further, exercising powers includes compliance investigations and/or surveillance activities conducted by an inspector appointed under subsection 43(1) of the Act or person referred to in section 44 of the Act (Australian Federal Police are ex officio inspectors).  Powers and functions delegated to QPWS and respective staff, are specified in Schedule 7 of the GBRMPA Delegations - an example includes relevant QPWS staff having the power to remove property from the Marine Park or take action to remedy, mitigate or prevent damage to the Marine Park caused by the removal of property. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Across the Reef Authority and through the RJFMP (and within the constraints of legislative requirements, such as the *Privacy Act 1988*), relevant Traditional Owner groups are informed, consulted and/or involved wherever possible. | Under section 8(3) of the Act, ‘the Authority may perform any of its functions, in co-operations with Queensland, a Queensland authority or local governing body in that State (e.g. local council).  Under subsection 48A(3) of the Act, the Minister for the Environment may enter into an arrangement with an appropriate Minister of Queensland in relation to officers or employees of Queensland or for an authority of Queensland for the purpose of allowing powers or functions to be delegated or sub-delegated under section 47 of the Act. The Minister has entered into a number of arrangements with Queensland. Also refer to Schedule 7 of the [GBRMPA Delegations](http://qudos/masterdocumentlist/Docs/Master%20Documents/v4-Delegation-MPA-GBRMP-Act-Regs-Zoning-POMs-2019-03-22.pdf) for the powers and functions delegated to QPWS.  As well as the Reef Authority performing its functions and exercising powers under s 5.1(c) of the Zoning Plan, section 5.4 of the Zoning Plan also allows the Reef Authority to perform its functions in the context of management activities (despite any limitations to the use or entry of a zone or part of a zone imposed by the Zoning Plan).  In addition, section 5.4 of the Zoning Plan allows the Reef Authority to authorise the undertaking of activities for the purpose of the management of the Marine Park (i.e. conducted on behalf of, or in co-operation with, the Reef Authority, including the RJFMP) (also refer to [Section 5.4 guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3547) for more detail). |
| **s 5.1(d)**  *to enforce a law of the Commonwealth or Queensland by a person authorised under that law, or under another law of that kind, to enforce the law* | For example, law enforcement activities undertaken by Australian Federal Police, Australian Border Force, Australian Defence Force, Australian Maritime Safety Authority, Maritime Safety Queensland, Queensland Police Service, Queensland Parks and Wildlife Service and Queensland Fisheries. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Traditional Owner consultation protocols apply as per respective agencies and government departments. | Defence activities that would otherwise require a permission (such as military training) are covered under s 5.2(d) and require notification to the Managing agencies (refer below). |
| **s 5.1(e)**  *to carry out reconnaissance or surveillance for the Commonwealth or Queensland* | Activities must be carried out for the Commonwealth or Queensland and include intelligence or surveillance activities.  Surveillance may include maritime incident response, vessel groundings, pollution, mass stranding events, pest outbreaks including COTS, and coral bleaching events.  These activities are generally conducted by the Australian Federal Police, Australian Border Force, Australian Defence Force, Australian Maritime Safety Authority, Maritime Safety Queensland, Queensland Police Service and Queensland Boating and Fisheries Patrol.  The activity may or may not be relevant to activities conducted to inform the enforcement of the law under s 5.1(d). | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Traditional Owner consultation protocols apply as per respective agencies and government departments. |  |

## Section 5.2 Use or entry without permission after notification

1. Section 5.2 of the Zoning Plan provides for some activities to be conducted in the Marine Parks without a Marine Parks permission, but after notifying the Reef Authority of specific details pertaining to the use and subject to any directions given by the Reef Authority. These directions may relate to how to conduct the use/activity.
2. It is an offence under section 38BC of the Act for a person to fail to comply with section 5.2 of the Zoning Plan.
3. If the Reef Authority is notified under section 5.2 of the Zoning Plan and in accordance with section 38BC of the Act the Reef Authority can give any direction in respect to a person’s conduct in a zone that is reasonably necessary for the protection or preservation of the Marine Parks including property or things, except the removal of a structure, landing area, farming facility, vessel, aircraft or other thing (refer to section 57 of the Regulations). Failure to comply with notification requirements (refer to section 38BC of the Act) or directions given by the Reef Authority (refer to section 38DC of the Act) is an offence.

| Note – in relation to the removal of property, the Reef Authority (in accordance with section 167 of the Regulations) may order a person to remove property from the Marine Park or take other remediating action if amongst other things the property may cause damage to the Marine Park, or is not permitted to be in the Marine Park (see 5.2(c) of the Zoning Plan. Note - there are other reasons for removal under section 167 of the Regulations). |
| --- |

1. For the purposes under section 5.2 of the Zoning Plan, requirements also exist under the Marine Park (Great Barrier Reef Coast) Zoning Plan (refer to Part 4, section 90). In most cases, the Managing agencies issue complementary directions.

| Note – separate State approvals under the Nature Conservation Act may be required for QPWS managed estate (e.g. National Park). Consultation with QPWS may be appropriate. |
| --- |

### Procedure

1. Where a person, is required under section 5.2 of the Zoning Plan and section 38BC of the Act, to notify the Reef Authority of the proposal to undertake (or engage in conduct of) an activity in a particular location/s at specified time/s within a zone/s of the Marine Parks, the Reef Authority’s view is that the notification should be provided to the Reef Authority as soon as reasonably practicable in writing. Verbal communication is acceptable in urgent situations, but must be then followed up in writing as soon as reasonably practicable.
2. After a person notifies the Reef Authority, the Reef Authority’s delegate may, if appropriate, provide a response which includes directions to the person in respect of the proposed conduct (refer to section 57 of the Regulations). In some cases more detail may be required from the person notifying in order for the Reef Authority to ascertain if a direction is required or not. The Reef Authority’s or Managing agencies’ response may be verbal (in the case when directions require urgent response) or written (in the form of letter, email and/or text message). In the case where the delegate provides a verbal response to the person in respect of the proposed conduct, the Reef Authority or Managing agencies will, as soon as reasonably practicable afterwards, send written confirmation, specifying the verbal directions given. All notifications and Directions should be recorded in an appropriate electronic management system.
3. In cases where proposed use and entry requiring a notification involves routine activities (for example routine defence activities or the servicing of navigational aids), the Reef Authority may allow forward activity planning documentation as an upfront notification. If there are any deviations from the forward planning notification or proposed works are beyond routine activities, the Reef Authority requires a notification specifically for any additional methods and/or activities.
4. A direction given by the Reef Authority may include the use of a vessel/s and/or aircraft where a zone (or part of a zone) is used or entered without permission under section 5.2 of the Zoning Plan.
5. Delegation of Section 5.2 directions are described in [GBRMPA Delegations](http://qudos/masterdocumentlist/Docs/Master%20Documents/v4-Delegation-MPA-GBRMP-Act-Regs-Zoning-POMs-2019-03-22.pdf).

### Guidance applying section 5.2

1. Activities under section 5.2 of the Zoning Plan must fall under one of the categories outlined in Table 3 for s 5.2 (a) to (g).

Table 3. Guidance when applying the respective subsections of section 5.2 of the Zoning Plan (including other considerations such as Queensland requirements)

| **subsection** | **guidance including examples of relevant activities and directions** | **Native Title Act and Traditional Owner consultation and involvement** | **other considerations** |
| --- | --- | --- | --- |
| **s 5.2(a)**  *otherwise than in an emergency to remove or salvage a vessel or an aircraft or a section of a vessel or an aircraft or other wreck, that is wrecked, stranded, sunk or abandoned* | *Marine Park Authority Board policy MPA1999-174-5(d)(i)* states:  “In general wrecked, sunken or abandoned vessels are to be removed from the Great Barrier Reef Marine Park; but should it be considered that removal of the vessel would:   * incur an unacceptable risk of environmental impact * incur an unacceptable risk to persons performing the removal; or * otherwise be impractical   removal should not be attempted."  There is no single response procedure that can be applied to all vessel incidents, rather the course of action will depend on an assessment in each case of a range of factors, including (but not limited to):   * the nature and scale of vessel and environmental damage caused; * the certainty of jurisdiction and the lead response agency; * the degree of urgency in relation to undertaking the mitigation or remediation works; * the degree of cooperation evident from owners and insurers; * the estimated cost of damage mitigation; * whether the vessel is foreign owned; and * the value of assets or security available to fund the remediation, together with any applicable limitation amount under the *Limitation of Liability for Maritime Claims Act 1989.*   For more than minor incidents, a salvage plan is typically required, as well as proof of removal.  Note that Managing agencies should seek legal advice before removal is undertaken where there is a likelihood of litigation. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Wherever possible, relevant Traditional Owner groups are informed, consulted and/or involved where possible (refer to the Incident Management Framework. | If located in joint waters of the Marine Parks, complementary directions are given by QPWS.  Refer to Marine Parks Act (sections 99-102).  In an emergency and where the incident poses a threat to the marine environment or safety, the activity is conducted without permission or notification under section 5.1 (a)(vi). |
| **s 5.2(b)**  *to construct, operate or service navigational aids, and their ancillary buildings and works, that are authorised under a law of the Commonwealth or of Queensland, including the operation of vessels and aircraft for those purposes* | Where the activity involves servicing of navigational aids only, the directions issued by the Reef Authority or Managing agencies may specify, for example, the timing of access to minimise impacts on seabirds and other protected species, as well as methods used to undertake the activities.  Where works and construction are proposed, an Environmental Management Plan is often required (which may also include a Cultural Heritage Management Plan) for approval prior to access and this is written into the direction.  If the works proposed are to decommission a navigational aid, a decommissioning plan is required (which may include Cultural Heritage Management Plan) for approval prior to access. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Where the activity involves site inspections or servicing of navigational aids only, wherever possible Traditional Owners are to be informed and consulted about when and where the activity is being conducted in their Country.  Activities involving construction and works are very likely to be considered future acts requiring FANs. Further, native title claimants/holders (if any) are likely to be afforded additional procedural rights in relation to these activities.  Agency proposing to conduct these activities is responsible for issuing the relevant FANs and engaging with the native title claimants, holders or representative bodies.  Relevant Traditional Owners are to be consulted early about the proposed works and, in the event of construction activities, be involved in the development and implementation of the Cultural Heritage Management Plan, as part of the Environmental Management Plan approvals where deemed necessary. | Lease agreements with Australian Maritime Safety Authority are in place for working Aids to Navigations on Commonwealth Islands. There are four Commonwealth Heritage Lightstations (listed under the EPBC Act) which have associated Cultural Heritage Management Plans (also refer to [Historic heritage assessment – Lightstations and Aids to Navigation guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3548)).  Separate State approvals under the Nature Conservation Act may be required for QPWS managed estate (e.g. National Park), for example where it is proposed to land an aircraft on National Park to facilitate the servicing of an Aid to Navigation. |
| **s 5.2(c)**  *to remove, in accordance with an order under the Regulations (being an order to which section 38H of the Act applies) or a deed of agreement, property described in the order or deed* | The Reef Authority can issue an Order to Remove property in the Marine Park under 167 of the Regulations.  For example, if an unpermitted mooring has been discovered, an Order to Remove can be issued to the responsible person (owner, person who has control, person who caused it to be in the Marine Park, person who last held a permission). The Order to Remove allows the person access to the Marine Park to remove their property.  The Order to Remove should also stipulate how the property is to be removed to avoid and mitigate impacts to the values of the Marine Park. Penalties apply for failure to comply with an Order to Remove.  Depending on the location of the property, the Managing agencies may issue complementary orders. | Activity is unlikely to be considered a future act, particularly if the removal is reasonably necessary for the ‘protection of public health or public safety’. Even if activities do not fall within this definition, it is very unlikely that FANs are required.  However, wherever possible, relevant Traditional Owner groups are informed, consulted and/or involved (refer to the Incident Management Framework). | Refer to section 38DC of Act (replaces section 38H of the Act) and section 167 of the Regulations.  Guidance provided in s 5.2(a) is also applicable to s 5.2(c), including *Marine Park Authority Board policy MPA1999-174-5(d)(i)*  Refer to Marine Parks Act (section 99-102) for related provisions.  Schedule 7 of the GBRMPA delegations provides QPWS with the powers necessary to remove property from the Marine Park or take action to remedy, mitigate or prevent damage to the Marine Park caused by the removal of property. |
| **s 5.2(d)**  *to undertake defence activities that would otherwise require permission under this Zoning Plan* | Such as national and/or international defence exercises - for example activities at Rattlesnake, Cowley Beach, and the Talisman Sabre biennial international training activity in Shoalwater Bay.  The Managing agencies work closely with the Department of Defence and include any requirements (for example how to avoid or mitigate impacts on the values of those locations), in their specific defence exercise plans. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  However, wherever possible, relevant Traditional Owners are to be consulted about the proposed defence exercises and where applicable, involved in the development and implementation of the Cultural Heritage Management Plan. | Military training in State Marine Park and on island National Parks require notification and/or permission from the State (refer to [QPWS procedural guide: Australian Defence Force activities on QPWS managed areas](https://parks.des.qld.gov.au/management/resources?a=272936%3Apolicy_registry%2Fpg-pk-nrm-adf-activities-qpws-managed-areas.pdf)). |
| **s 5.2(e)**  *to undertake government geodetic surveys, government bathymetric surveys or similar government surveys* | Such as surveys conducted by Marine Safety Queensland Hydrographic Survey Unit, Geoscience Australia or the Royal Australian Navy.  The Managing agencies issue joint directions to manage any potential risks from the associated activities. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Traditional Owner consultation protocols as per respective agencies and government departments. | All non-government related geodetic, bathymetric or similar surveys require a Marine Parks permission. |
| **s 5.2(f)**  *to undertake urgent maintenance or works on essential public services (including power, water, sewerage and communication systems), that are authorised under a law of the Commonwealth, Queensland or a local government authority).* | Relates to urgent, as opposed to general, maintenance of services.  Other essential public services may include weather stations authorised under law.  Directions issued by the Reef Authority or Managing agencies are likely to specify, for example, the timing of access to minimise impacts on seabirds and other protected species, as well as the methods used to undertake the activity. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  Traditional Owners consultation protocols as per respective agencies and government departments. | All non-urgent maintenance and works require a Marine Parks permission. |
| **s 5.2(g)**  *to deal with an emergency involving a serious threat to the environment, other than a threat mentioned in subparagraph 5.1(a)(v) or (vi).* | Serious environmental threats may include cyclones, floods, bleaching events, invasive species outbreaks, and disease outbreaks.  Excludes threat of pollution and/or the removal or salvage of a vessel or aircraft which poses threat to marine environment or safety (as these activities are covered under s 5.1(a)(v) or (vi)). | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  However, wherever possible, relevant Traditional Owner groups are informed, consulted and/or involved (also refer to the Incident Management Framework). | With regards to the removal of crown-of-thorn starfish, this species occurs naturally in the Marine Parks and although they can cause serious threat to the environment, the need to remove them or cull them is generally not considered an emergency.  A Marine Parks permission may be required to remove crown-of-thorn starfish (for further information refer to [crown-of-thorn starfish control control](https://www2.gbrmpa.gov.au/our-work/programs-and-projects/crown-thorns-starfish/Crown-of-thorns-starfish-control-program) program).  Section 5.2 directions may apply to incident response activities undertaken by a Third party at a local or regional scale (as a direction is only given to the person notifying the Reef Authority and does not extend to multiple parties). Therefore likely to be useful if the Reef Authority is notified of a species outbreak, such as the Asian green mussel.  Incident response to serious environmental threats on broader regional or reef-wide scales involving more than one Third party to assist in the incident response effort, are considered under section 5.4 of the Zoning Plan (refer to Section 5.4 guidelines). |

## Section 5.3 Entry to zones for purpose of taking protected species etc.

1. For the purposes of the definition of Protected Species in the Zoning Plan, refer to section 30 of the Regulations which declares protected species for the purposes of the Zoning Plan. Protected species is defined in section 3 the Act (see below), which includes species declared by the Regulation be it a ‘protected species’ or a ‘strictly protected species’. At the time of publishing these guidelines no strictly protected species were declared in the Regulations.

| As defined in the Act protected species means any of the following:  (a) a cetacean  (b) a listed marine species, a listed migratory species, a listed threatened ecological community, or a listed threatened species  (c) a species of marine mammal, bird or reptile that is prescribed as endangered wildlife, vulnerable wildlife or rare wildlife under the *Nature Conservation Act 1992* of Queensland  (d) a species declared by the regulations to be a protected species for the purposes of the definition  (e) a species declared by the regulations to be a strictly protected species for the purposes of this definition. |
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1. Section 5.3 provides that the taking of protected species legally can only occur where there is: an existing Marine Park/s permission; or in accordance with an accredited traditional use of marine resources agreement and any Regulations applicable to the operation of the agreement; or an accredited harvest fishery; or any other purpose prescribed in the Regulations. Note there are no accredited harvest fisheries in existence at the date of these Guidelines. In recognition that protected species may be threatened, at risk, and/or have iconic status or iconic values; any activity involving protected species needs to be managed appropriately to prioritise their ongoing protection and conservation.

| As defined in the Zoning Plan, taking an animal, plant or marine product includes:  a) removing, gathering, catching, capturing, killing, destroying, dredging for, raising, carrying away, bringing ashore, interfering with and obtaining (by any other means) the animal, plant or marine product; and  b) attempting to do anything mentioned in paragraph (a). |
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1. The Reef Authority has an obligation under subsection 7(3) of the Act to manage the Marine Park in a way that is (amongst other stated things) consistent with the principles of ‘ecologically sustainable use’ (refer to section 3AA and 3AB of the Act) which includes conservation of a species either for its role in the ecosystem, or as an iconic species. Within the Marine Parks, the Managing agencies have put in place special management measures for protected species to reduce detrimental human-related impacts on those species, prevent further population declines, and promote their recovery and resilience in the wild.
2. The list of Protected Species for the Marine Park provided in section 30 of the Regulations may not list all protected species, as other species may be included as protected species due to the operation of subsections 30(b) or (c) of the Regulations (which incorporates certain species listed or prescribed under other Commonwealth (*Environment Protection and Biodiversity Conservation Act 1999*) or Queensland laws *(Nature Conservation Act 1992*)). The list is updated periodically when the opportunity arises, to reflect any amendments made to the relevant Commonwealth or State legislation.
3. Species under International conventions or treaties agreed to by the Australian Government may be declared in relevant legislation, as well as in section 30 of the Regulations.

| Australia has international obligations for species that are listed as vulnerable, endangered or critically endangered under the [Red List of Threatened Species by The World Conservation Union IUCN](http://www.iucnredlist.org/). There are also three international conservation conventions of which Australia is a signatory relevant to the protected species in the Marine Park:   1. [United Nations Convention on Biological Diversity](https://www.cbd.int/) (CBD) 2. [Convention on the International Trade in Endangered Species of Wild Fauna and Flora](https://www.cites.org/) (CITES) – listed on Appendix I 3. [Convention on Migratory Species of Wild Animals](http://www.cms.int/) (also known as CMS or the Bonn Convention) – listed on Appendix II. Under the CMS an international [Memorandum of Understanding on the Conservation and Management of Dugongs and their Habitats throughout their Range](http://www.cms.int/dugong/en) took effect on 31 October 2007. |
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### Guidance applying section 5.3

1. Section 5.3 stipulates the provisions for the entry to zones for the purposes of taking an animal or plant of a protected species or a strictly protected species.
2. For activities involving the taking of an animal or plant of a protected species or a strictly protected species under section 5.3 of the Zoning Plan, they must fall under one of the categories outlined in Table 4 for s 5.3 (a) to (c).

Table 4. Guidance when applying the respective subsections of section 5.3 of the Zoning Plan (including other considerations such as Queensland requirements)

| **subsection** | **guidance including examples of relevant activities** | **Native Title Act and Traditional Owner consultation and involvement** | **other considerations** |
| --- | --- | --- | --- |
| **s 5.3(a)**  *in accordance with a permission granted for a provision of Part 2 of this Zoning Plan* | There are limits on granting permissions to take protected species as stipulated in section 105 of the Regulations.  Also refer to the [Protected Species Policy](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/593) which sets out how the Reef Authority manages activities that include the direct take of protected and strictly protected species in the Marine Park.  As specified in the Protected Species Policy, the take of a protected species may be appropriate in circumstances where it will contribute to the conservation of the protected species for the following activities:   * + 1. photography, filming or sound recording (unless constitutes low impact recording as described in the [Photography, filming and sound recording assessment guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3236));     2. public display for education and interpretation;     3. tourism education and interpretation (e.g. touch tanks);     4. research;     5. broodstock collection for aquaculture; or     6. other activities on a case-by-case basis.   Applications for permission involving the take of protected species can be assessed as joint permissions if the activity also applies to parts of the Great Barrier Reef (Coast) Marine Park.  Depending on the proposed activity and the assessment approach, public comment and/or targeted consultation may be required (refer to Part 3 Division 3 of the Regulations, the [Permission System Policy](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3224), and related guidelines including [Application guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3226) and [Assessment and decision guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3229)).  As part of the assessment of the proposed activity there are mandatory considerations in deciding whether to grant permission (under section 103 of the Regulations and respective Queensland Marine Parks Regulations 2017), including for example:   * + impacts of the proposed conduct   + if proposal also requires an approval under the EPBC Act or the law of Queensland   + relevant recovery plans, wildlife conservation plans, threat abatement plans or approved conservation advice, and   + International agreements to which to which Australia is party. | FANs under the Native Title Act apply and administered through the joint permission system.  Through the joint permission system, Traditional Owners are to be consulted and involved to inform the assessment, wherever possible.  Applicants are encouraged to consult early with relevant Traditional Owners to discuss the proposal and seek advice regarding their cultural heritage values.  The Reef Authority also encourages applicants to invite Traditional Owners to participate in research and monitoring activities.  The Intellectual Property and contribution of Traditional Owners to an activity must be appropriately recognised where used.  Also refer to [Traditional Owner assessment guidelines](http://elibrary.gbrmpa.gov.au/jspui/handle/11017/3241). | Additional approvals and restrictions may apply under other Commonwealth and/or State legislation, such as   * EPBC Act - *listed marine species, listed migratory species, and listed threatened species.* * Nature Conservation Act - also refer to Queensland’s [Nature Conservation (Animals) Regulation 2020](https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2020-0136) (if it relates to a protected species in the Marine Parks) and/or [Nature Conservation (Protected Areas Management) Regulation 2017](https://www.legislation.qld.gov.au/view/pdf/asmade/sl-2017-0157) (if it is proposed in a National Park).   Also refer to [Managing Research in the Great Barrier Reef Marine Park guidelines](http://hdl.handle.net/11017/3227). |
| **s 5.3(b)(i)**  *in accordance with:*  *an accredited traditional use of marine resources agreement, and any provisions of the Regulations applicable to the operation of the agreement* | In relation to protected species, the intent of a TUMRA is to retain the Native Title rights of the Traditional Owners and to allow, amongst other things, for the sustainable traditional use of protected species, most commonly dugong and turtle, for cultural purposes in their area of identified Country.  The Managing agencies decide to jointly assess and accredit TUMRAs if TUMRA area includes both Marine Parks.  A TUMRA is accredited in accordance with Part 4 of the Regulations. In assessing the application for accreditation of a TUMRA the Reef Authority must consider as part of the accreditation, a number of matters (refer to section 145 of the Regulations), including the need for conservation of protected species and the capability of the species to sustain harvesting.  The Reef Authority may also impose conditions on the accreditations (refer to section 148 of the Regulations). | Nothing in the Zoning Plan is intended to affect the operation of section 211 of the Native Title Act regardless of which zone the activity is undertaken in (section 1.7 (4) of the Zoning Plan).  A TUMRA is Traditional Owner led and, in developing a TUMRA for a site or area of the Marine Park/s, and prior to the Reef Authority or Managing agencies accrediting the TUMRA, it is expected the Traditional Owners for the TUMRA site or area consult with neighbouring Traditional Owner groups. The Reef Authority may request a letter of support from the neighbouring Traditional Owner groups to assist the assessment of the proposed TUMRA.  Through the accreditation process the Managing agencies work in partnership with the Traditional Owner group. Upon the accreditation of the TUMRA, the Reef Authority may establish a contractual agreement with the TUMRA group to support the implement of their accredited TUMRA. | Refer to the Zoning Plan Dictionary for the definition of a TUMRA.  As of the date of publication, there are ten accredited TUMRAs covering over 43 per cent of the Marine Park (refer to the Reef Authority’s [Traditional Use of Marine Resources Agreements website](http://www.gbrmpa.gov.au/our-partners/traditional-owners/traditional-use-of-marine-resources-agreements)).  A TUMRA includes the Traditional Owners’ aspirations for the TUMRA site or area of their Country.  Some Traditional Owner groups covered by a TUMRA have placed a moratorium on the take of protected species in the TUMRA site or area.  In implementing an accredited TUMRA, the Reef Authority establishes a formal TUMRA implementation agreement which includes key deliverables, such as annual plans and reporting requirements.  Although TUMRAs were initially developed primarily to allow for the take of protected species under the Zoning Plan, since the first TUMRA was accredited in 2005, the TUMRA program has widened to achieve broader land and sea country management outcomes.  Also refer to [A Reef-wide framework for managing traditional use of marine resources in the Great Barrier Reef Marine Park](http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/408/1/A-reef-wide-framework-for-managing-traditional-use-of-marine-resources-in-the-Great-Barrier-Reef-Marine-Park.pdf), which includes the history of the previous management arrangements regarding traditional take. |
| **s 5.3(b)(ii)**  *in accordance with:*  *an accredited harvest fishery* | At the time of publishing these guidelines, there are no accredited harvest fisheries. Some permissions exist which allow for the take of certain protected species by some harvest fishery operators (which is considered under s 5.3(a)).  In future, subject to the Reef Authority being satisfied that a harvest fishery may be accredited, the take of protected species may be allowed in accordance with such accreditation. Any such accreditation would be done in accordance with Section 14 of the Regulations. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  However, wherever possible, relevant Traditional Owner groups are informed, consulted and/or involved. |  |
| **s 5.3(c)**  *any other purpose prescribed in the Regulations and limitations prescribed in the Regulations* | The intent of 5.3(c) is to provide for the take of protected species for other purposes or in accordance with limitations prescribed in the Regulations. In the application of s 5.3(c) the purpose or limitation prescribed in the regulations has been based upon a number of criteria including but not limited to:   * consistent with the conservation of the protected species * has minimal detrimental human-related impacts on those species * where take is otherwise unavoidable * is consistent with preventing further population declines * with promoting their recovery and resilience in the wild.   At the time of finalising these guidelines, section 56 of the Regulations allows entry to a zone for the purpose of taking two species of pipefish (*Solegnathus hardwickii and S. dunckeri*) and also scalloped hammerhead shark (*Sphyrna lewini*) ifin accordance with Queensland fisheries legislation. | Activities are very unlikely to be considered future acts or the type of future acts which require FANs.  However, wherever possible, relevant Traditional Owner groups are informed, consulted and/or involved. | Any consideration of amending the Regulations to allow any additional species to be taken in accordance with s 5.3(c) would require strong conservation justification about how this is consistent with a comprehensive regulatory amendment process, including consideration of the objects of the Act and the Reef Authority’s [Protected Species Policy](https://elibrary.gbrmpa.gov.au/jspui/handle/11017/593) and other policies intended for protected species. Consultation with the relevant Commonwealth and State agencies is likely to be required from an early stage, and there are National and State species conservation processes and obligations that would need to be observed (e.g. international conventions, listing processes, recovery plans). |

# References/ endnotes

Nil