

# Conservation Agreement

**Minister for Sustainability, Environment, Water,  
Population and Communities**

**on behalf of the Commonwealth of Australia**

**and**

**The Minister for Agriculture, Food and Regional  
Economies**

**and**

**The Minister for Environment  
on behalf of the State of Queensland**

Agreement in relation to aquaculture operations in the Great Sandy  
Marine Park as described in the

*Great Sandy regional marine aquaculture plan*

(Queensland Government, approved October 2010) and made under the  
*Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

# Conservation Agreement

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# Conservation Agreement

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**Date**

This conservation agreement is made on the 7 day of 9 2011

**Parties**

1. **Tony Burke**, Minister for Sustainability, Environment, Water, Population and Communities on behalf of the Commonwealth of Australia (the *Minister*).
2. **Tim Mulherin**, Minister for Agriculture, Food and Regional Economies and
3. **Vicky Darling**, Minister for Environment on behalf of the State of Queensland (the *State*).

**Recitals**

- A Under sections 305(1) and 305(1A) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the *EPBC Act*) the Minister may, on behalf of the Commonwealth, enter into an agreement for the protection, conservation and management of any listed species or ecological communities, or their habitats. Section 305(1A)(c) further states that the agreement may also provide for the mitigation or avoidance of actions that might adversely affect biodiversity.
- B The Parties have agreed to enter into this conservation agreement (*Agreement*) under section 305 of the EPBC Act in relation to Aquaculture Operations in the Great Sandy Marine Park under the *Great Sandy regional marine aquaculture plan* (Queensland Government, approved October 2010) (the *Plan*) at Schedule 3.
- C This Agreement contributes to the protection, conservation and management of the biodiversity and ecological values of the Great Sandy Marine Park by ensuring marine aquaculture development in the Great Sandy Marine Park is planned, ecologically sustainable and will avoid significant impacts on matters of national environmental significance (*MNES*) protected under the EPBC Act.
- By directing development and management of Aquaculture Operations in the Great Sandy Marine Park through the Plan, this Agreement limits impacts to MNES through avoidance of development in high conservation areas, the mitigation of residual risks through management controls and the application of strict and consistent conditions.
- D As required by section 305(2)(a) of the EPBC Act, the Minister is satisfied that this Agreement:
- (i) will result in a net benefit to the conservation of biodiversity by way of

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- providing for actions to be taken in accordance with the Plan. Specifically, the Plan will constrain Aquaculture Operations to low impact activities within allocated sites within the Great Sandy Marine Park, as well as minimising risk of interactions with MNES and impacts on biodiversity; and
- (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan made under the EPBC Act.
- E Section 306A of the EPBC Act provides that the Minister may include in a conservation agreement a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3.
- F As required by section 306A(2), the Minister is satisfied that the Class of Actions to which the declaration in clause 6 of this Agreement relates are not likely to have a significant impact on listed threatened species and ecological communities, listed migratory species, the World Heritage or National Heritage values of Fraser Island or the ecological character of the Great Sandy Strait Ramsar site.
- G Pursuant to section 307 of the EPBC Act, this Agreement has the effect of binding the Commonwealth and the State.

## Terms and conditions

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**It is agreed** as follows.

### 1. Definitions

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The following definitions apply unless the context requires otherwise:

**Approval** includes any approval, authority or permit required to undertake an Aquaculture Operation under State law.

**Aquaculture Operation** means an operation for propagating, rearing, keeping, growing or breeding an aquatic plant or animal, including a fish, crustacean, reptile or mollusc, or other marine product and includes the construction, operation, maintenance, modification, demolition or removal of any structure associated with these activities.

**Business Day** means a day, not being a Saturday, Sunday or public holiday in the Australian Capital Territory.

**Class of Actions** means the class of actions set out in Schedule 2.

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Implementation Guide** means the *Implementation Guide for the Great Sandy regional marine aquaculture plan, October 2010*, developed by the Queensland Government and attached at Schedule 4.

**Minister** means the Minister administering the EPBC Act or a delegate of the Minister under the EPBC Act.

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**MNES** means matters of national environmental significance.

**Non-Intensive Aquaculture Operation** means an Aquaculture Operation (other than an Aquaculture Operation that involves the addition of feed) that uses one of the following systems, as described further in the Plan:

- (a) racks;
- (b) sub-surface lines;
- (c) surface lines; or
- (d) sea ranching.

**Parties** means the parties to this Agreement.

**Plan** means the *Great Sandy regional marine aquaculture plan* as approved by the Queensland Government in October 2010 attached at Schedule 3, and includes the Implementation Guide.

**Policy** means the *Policy for the allocation of marine aquaculture authorities, October 2010*, developed by the Queensland Government and attached at Schedule 5.

**State** means the State of Queensland.

## 2. Interpretation

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The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (d) a reference to a clause, Schedule or annexure is a reference to a clause, schedule or annexure to this Agreement;
- (e) a reference to an agreement (including this Agreement) or document, other than the Plan, the Implementation Guide and the Policy, is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document;
- (f) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, but excludes a communication by electronic mail;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to conduct includes an omission, statement or undertaking, whether or not in writing; and

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- (i) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

## **3. Priority**

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If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) the terms and conditions of this Agreement;
- (b) Schedule 2;
- (c) Schedule 3;
- (d) Schedule 4;
- (e) Schedule 5;
- (f) Schedule 1;
- (g) any attachments to the Schedules; and
- (h) documents incorporated by reference in this Agreement.

## **4. Commencement and duration**

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This Agreement shall have effect from the day of execution and continues in effect unless terminated in accordance with clause 9.

## **5. Regulation and management of aquaculture in accordance with the Plan**

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To the extent permitted by law, the State undertakes to ensure that any Aquaculture Operation that is proposed or undertaken in the marine areas within the Great Sandy Marine Park boundaries are regulated and managed in accordance with the Plan.

## **6. Declaration**

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- (a) Pursuant to section 306A of the EPBC Act, and subject to clause 6(b) of this Agreement, the Class of Actions specified in Schedule 2 do not require approval under Part 9 of the EPBC Act for the purposes of sections 12, 15A, 15B, 15C, 16, 17B, 18, 18A, 20 and 20A of the EPBC Act.
- (b) Clause 6(a) only applies to:
  - (i) the version of the Plan approved by the State and attached at Schedule 3 to this Agreement;
  - (ii) the version of the Implementation Guide attached at Schedule 4 to this Agreement;

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- (iii) the version of the Policy attached at Schedule 5 to this Agreement; and
- (iv) does not apply in respect of any revised or amended version of the Plan, Implementation Guide or Policy (as relevant) unless the changes to the revised or amended version of that document (or those documents, as the case may be) have been agreed in writing by the Minister.

### **7. Dispute resolution**

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- (a) Any dispute arising during the course of this Agreement will be dealt with as follows:
  - (i) the Party claiming that there is a dispute will send to the other party a notice setting out the nature of the dispute;
  - (ii) the Parties will try to resolve the dispute by direct negotiation, including by referring the dispute to a person who may have authority to intervene and direct some form of resolution. For the avoidance of doubt, if the dispute is referred to a person under this paragraph, that person will act as an independent third party umpire, and not as a mediator or arbitrator;
  - (iii) the Parties have 10 Business Days from the date of the notice issued in paragraph (i) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
  - (iv) if:
    - (A) there is no resolution or agreement; or
    - (B) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,then, either party may commence legal proceedings.
- (b) Despite the existence of a dispute, the Parties will (unless requested in writing not to do so) continue to perform their obligations under this Agreement.
- (c) This clause does not preclude either Party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

### **8. Review of this Agreement**

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A review of the operation of this Agreement, including the Schedules, is to be undertaken by the Parties at least once every five years. Failure to undertake this review will not invalidate this Agreement.

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## 9. Termination and variation

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- (a) This Agreement may only be varied in accordance with the EPBC Act.
- (b) This Agreement may be terminated in the manner specified in the EPBC Act or otherwise as agreed by the Parties.

## 10. Reporting

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- (a) The State will, within two months after every second anniversary of this Agreement, provide the Minister with a report that will include:
  - (i) a summary of compliance with the terms of this Agreement during the previous 24 month period;
  - (ii) a summary of the actions within Schedule 2 taken under this Agreement during the previous 24 month period; and
  - (iii) upcoming major activities to which this Agreement applies.
- (b) The reports outlined in paragraph (a) must be provided every two years and until allocation of the sites in the Plan has been exhausted, or as otherwise agreed between the Parties.

## 11. Notification

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- (a) The State must notify the Minister as soon as reasonably practicable after becoming aware of past or potential future material non-compliance with this Agreement by the State.
- (b) The State will respond promptly to any correspondence from the Minister about this Agreement.

## 12. Auditing

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- (a) From time to time the Parties may agree to an independent audit of the application of this Agreement.
- (b) The appropriate auditor and the scope of the audit conducted under paragraph (a) will be agreed by the Parties.
- (c) The State agrees to fully cooperate with any audit conducted under this clause.
- (d) Nothing in this clause limits the Minister's powers under the EPBC Act.

## 13. Negation of employment, partnership and agency

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The State agrees not to represent itself and to ensure that its associates do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

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## 14. Notices

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- (a) Any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:
- (i) must be in writing and signed by the sender or a person duly authorised by the sender;
  - (ii) must be addressed and delivered to the intended recipient at the address below or the address last notified by the intended recipient to the sender after the date of this Agreement:
    - (A) to the Commonwealth: Attention: First Assistant Secretary, Approvals and Wildlife Division  
The Department of Sustainability, Environment, Water, Population and Communities  
GPO Box 787  
Canberra ACT 2601
    - (B) to the State: Attention: Director, Marine and Terrestrial, Strategic Policy Projects  
Department of Environment and Natural Resources  
400 George St  
Brisbane QLD 4000
- And
- (iii) will be taken to be duly given or made when received at the above address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## 15. Entire Agreement

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This Agreement, including the Schedules attached to it, contains the entire agreement between the Parties with respect to its subject matter. It sets out the conduct relied on by the Parties and supersedes all earlier conduct and prior agreements and understandings between the Parties in connection with its subject matter.

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### **16. No waiver**

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A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **17. Further assurances**

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At the reasonable request of another Party, each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement.

### **18. Costs**

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- (a) Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (b) All relevant taxes, duties and government charges imposed or levied in Australia, now or in the future, in connection with this Agreement will be borne by the State.

### **19. Severance**

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If any part of this Agreement is, or becomes, void or unenforceable, that part is or will be severed from this Agreement to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

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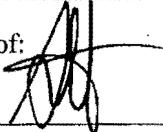
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## Execution page

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Signed by **Tony Burke**, Minister for  
Sustainability, Environment, Water,  
Population and Communities

in the presence of:



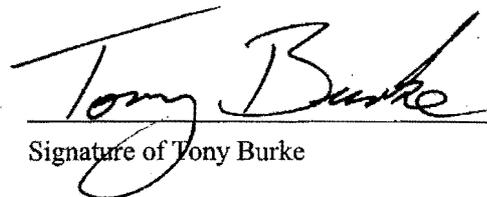
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Witness

SEAN HALSG

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Print Name

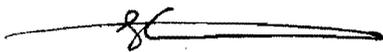


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Signature of Tony Burke

Signed by **Tim Mulherin**, Minister for  
Agriculture, Food and Regional Economies

in the presence of:



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Witness

Kate Lennox

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Print Name

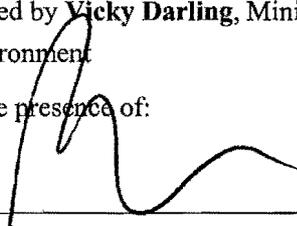


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Signature of Tim Mulherin

Signed by **Vicky Darling**, Minister for  
Environment

in the presence of:



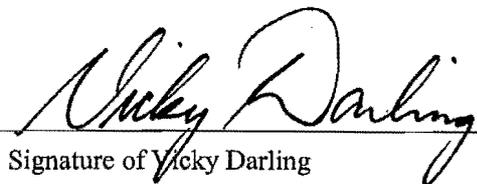
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Witness

Anthony Roberts

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Print Name



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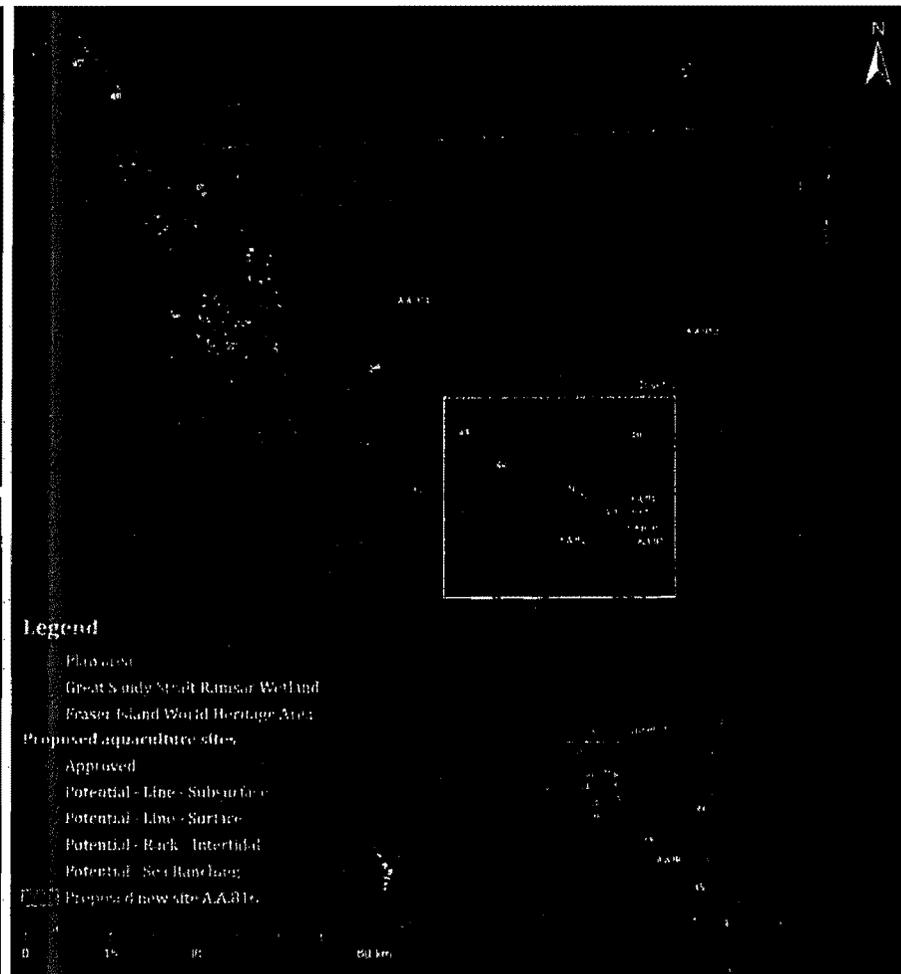
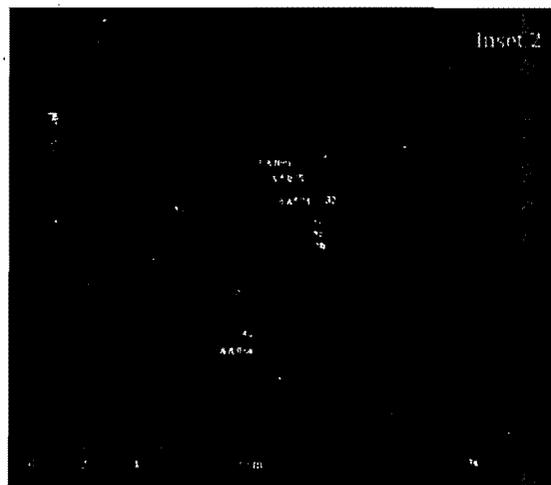
Signature of Vicky Darling

# Conservation Agreement

## Schedule 1

### Map of Great Sandy regional marine aquaculture plan area

NB: For details on exact site locations and GPS coordinates, refer to the Plan at Schedule 3.



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## Schedule 2

### Class of Actions

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The Class of Actions is any Non-Intensive Aquaculture Operation that has been assessed and approved by the State, or a State agency, under the relevant State legislation and in accordance with the Plan, and which has involved:

- (a) the site for the Aquaculture Operation being allocated in accordance with the competitive allocation process as required under the Plan and set out in the Policy;
- (b) the Aquaculture Operation being assessed and approved in accordance with the assessment criteria set out in the Plan applicable to that type of Aquaculture Operation; and
- (c) the Approval(s) for the Aquaculture Operation being subject to the conditions as required under the Plan for that type of Aquaculture Operation.

NOTE: If an operator wishes to undertake an Aquaculture Operation that falls outside the Class of Actions described above, they should consider the need to refer these activities to the Department responsible for administration of the EPBC Act for consideration of potential impacts on matters of national environmental significance.

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## Schedule 3

*Great Sandy regional marine aquaculture plan (Queensland Government, 2010)*

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## **Schedule 4**

*Implementation Guide for the Great Sandy regional marine aquaculture plan (Queensland Government, 2010)*

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## **Schedule 5**

*Policy for the allocation of marine aquaculture authorities* (Queensland Government, 2010)

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