



Queensland

Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 61

made under the

Marine Parks Act 2004

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

Statutory Instruments Act 1992

General Outline

Short title

The short title of the subordinate legislation is the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013*.

Authorising law

Section 175(2)(k) of the *Nature Conservation Act 1992* (“the Act”) provides that a regulation may be made with respect to the taking, keeping or use of wildlife, the moving of wildlife into, in and out of the state, the release of wildlife into the wild and other dealing with wildlife.

Section 175(2)(q) of the Act provides that a regulation may be made to authorise the taking, keeping or use of a protected animal.

Section 175(2)(s) of the Act provides that a regulation may be made to prescribe offences for contraventions of a regulation, and fix a maximum

penalty of a fine of not more than 165 penalty units for such a contravention.

Policy objectives and the reasons for them

The key objective of the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013* (Amendment Regulation) is to streamline legislative processes, provide regulatory simplification, and provide a flexible framework for the management of current and emerging marine mammal conservation and management issues that reflects current scientific knowledge and provides for fair and equitable access to nature.

Whales, dolphins and dugongs in Queensland are currently managed under the *Nature Conservation (Whales and Dolphins) Conservation Plan 1997* (“whale and dolphin plan”) and the *Nature Conservation (Dugong) Conservation Plan 1999* (“dugong plan”) (collectively, “conservation plans”). The conservation plans are due to expire in August 2013.

It is proposed to simplify the existing marine mammal legislative framework by incorporating the current and amended provisions of the conservation plans into the *Nature Conservation (Wildlife Management) Regulation 2006* (“the Wildlife Management Regulation”).

The existing legislative framework no longer properly addresses contemporary conservation management issues or concerns. The whale and dolphin plan focuses on the management of whales because the east Australian humpback whale population had experienced significant decline and increased protection measures were required. This population has since been demonstrating a continuing strong recovery. Additionally, the whale and dolphin plan does not address the decline of inshore dolphins that has been reported in more recent years. The dugong plan is also inconsistent with current conservation management issues and concerns.

Achievement of policy objectives

To achieve its objectives, the Amendment Regulation amends the Wildlife Management Regulation to:

1. Allow commercial whale watching in state waters outside of marine parks (generally in waters off the Gold and Sunshine Coasts).

2. Allow for the continuation of dolphin feeding at Tin Can Bay in an environmentally responsible way.
3. Amend the marine mammal approach distances for vessels and aircraft for greater consistency with the *Australian National Guidelines for Whale and Dolphin Watching 2005*.
4. Simplify and streamline the declaration process for areas of special management and special management whales and dolphins and introduce special management provisions for dugongs to facilitate comparable protection for these animals.

The Amendment Regulation amends subordinate legislation under the *Marine Parks Act 2004* to remove legislative duplication and ensure greatest possible consistency across Queensland waters in regard to matters such as prescribed whale and dolphin approach distances and the behaviour of vessels, aircraft and persons in or entering the water, in the vicinity of whales and dolphins. This approach is supported by the Department of National Parks, Recreation, Sport and Racing, which administers the marine parks legislation.

With the approval of Queensland Treasury and Trade, the Amendment Regulation amends the *State Penalties Enforcement Regulation 2000* in regard to infringement notice offences and associated fines to support enforcement functions for the new arrangements and remove reference to the repealed conservation plans. The prescribed penalty units have been endorsed by the Department of Justice and Attorney-General.

Other minor amendments are made to achieve greater operational and administrative efficiency and legislative consistency.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objective of the *Nature Conservation Act 1992*, which is the conservation of nature, and is consistent with how the objective is to be achieved, specifically the protection of native wildlife and its habitat.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Alternative ways of achieving the policy objectives, including non-regulatory approaches, were considered and rejected because whales, dolphins and dugongs are protected wildlife under the Act and suitable regulation is required to mitigate threatening processes and minimise harm or distress caused directly or indirectly by human activity.

The Amendment Regulation delivers on the Queensland Government's Six Month Action Plan commitment to implement revised marine mammal regulations and implements the government's election commitment for dolphin feeding to continue at Tin Can Bay in an environmentally responsible way.

It provides for increased consistency across state and commonwealth waters in regard to the management and conservation of marine mammals, and increases consistency with the *Australian National Guidelines for Whale and Dolphin Watching 2005*, which were agreed by all Australian, state and territory governments. It also delivers greater benefits to the range of stakeholders than the alternative approaches that were considered.

Benefits and costs of implementation

The Amendment Regulation will not impose significant impacts on the community, business or government, nor does it place restrictions on the competitive market.

1. Commercial whale watching in state waters (outside of marine parks)

Opening state waters outside of marine parks to commercial whale watching will remove the current restriction on the competitive market with regards to commercial whale watching activities in Queensland state waters. The removal of this prohibition is unlikely to impose any significant impacts on the community, business or government.

2. Continuing dolphin feeding at Tin Can Bay

The provisions to legislate for the continuation of the existing dolphin feeding activity at Tin Can Bay will not impose any significant impacts on the community, business or government. It will support continuation of the positive financial benefits experienced within the Tin Can Bay community as a result of the current activity.

3. Marine mammal approach distances

The new and amended marine mammal approach distances will provide for increased consistency across state and commonwealth waters, assist with promoting community compliance, and minimise harassment and accidental vessel collision with marine mammals.

4. Special management declarations for animals and areas

When compared to the existing process, the new special management declaration provisions will provide increased levels of operational efficiency by providing clearer direction regarding the circumstances under which a special management declaration can be made and improved processes.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Three rounds of public consultation were undertaken (2009, 2011/12 and 2013) as part of the marine mammal legislation review. Consultation packages including a discussion paper, options analysis paper, draft legislation and a guide to the draft legislation were prepared in support of the consultation process and sent to key stakeholders and made available on the Department of Environment and Heritage Protection's website. Submissions were analysed and considered, and relevant amendments were made prior to finalising the Amendment Regulation.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that this Amendment Regulation may be cited as the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2013*.

Part 2 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

Clause 2 Regulation amended

This clause states that this part amends the *Nature Conservation (Wildlife Management) Regulation 2006* (“the Wildlife Management Regulation”).

Clause 3 Amendment of s 5 (Interpretation generally)

This clause removes the reference to schedule 4 and inserts a reference to schedule 5 in section 5 of the Wildlife Management Regulation. This is a consequence of the Amendment Regulation introducing a new schedule (see *clause 20* – insertion of new sch 2) and the subsequent renumbering of the remaining schedules (see *clause 19* – renumbering of schs 2 - 4).

Clause 4 Amendment of s 9 (Purpose of pt 1)

This clause removes note 1 of section 9 of the Wildlife Management Regulation to remove the reference to the *Nature Conservation (Dugong) Conservation Plan 1999* (“the dugong plan”).

Clause 5 **Insertion of new s 11A – General restriction on grant of wildlife authorities in dugong protection areas**

This clause inserts a new section 11A in the Wildlife Management Regulation. This ensures the existing requirements of the dugong plan concerning restrictions on the taking, keeping or use of protected wildlife in a dugong protection area are included in the Wildlife Management Regulation.

Clause 6 **Insertion of new s 43A – Keeping and use of dead marine mammals**

This clause inserts a new section 43A in the Wildlife Management Regulation to allow the chief executive to give a dead marine mammal to a Traditional Owner for the land or waters in which the marine mammal was found or taken from or to a person nominated by the relevant Traditional Owner. A dead marine mammal may only be kept or used for personal, domestic or non-commercial communal needs.

This section recognises the rights of Traditional Owners to undertake activities under Aboriginal tradition or Island custom. It deals with circumstances where an animal has not been taken under Native Title, and therefore its disposal is not subject to customary tradition under Native Title. The provision seeks to mirror the rights of Traditional Owners, had the animal been taken under customary tradition.

Clause 7 **Amendment of s 58 (Sick or injured protected marine mammals and turtles)**

This clause amends section 58 (2) of the Wildlife Management Regulation to remove the reference to the *Nature Conservation (Whales and Dolphins) Conservation Plan 1997* (“the whale and dolphin plan”).

Clause 8 **Insertion of new s 60A – Interacting with dolphins as part of Tin Can Bay dolphin feeding program**

This clause inserts a new section 60A in the Wildlife Management Regulation which allows the chief executive to approve and condition the existing dolphin feeding program at Tin Can Bay. This new section honours a commitment by the Queensland Government to ensure the lawful continuation of the Tin Can Bay dolphin feeding program in an environmentally responsible way. It provides for conditions to be placed on the ongoing operation of the feeding program to promote best practice dolphin feeding.

Clause 9 **Amendment of ss 70, 77, 92, 97, 110, 119, 126, 136, 152 and 166, hdgs**

This clause changes the word ‘division’ to ‘div’ in the headings for sections 70, 77, 92, 97, 110, 119, 126, 136, 152 and 166 of the Wildlife Management Regulation in accordance with legislative drafting conventions.

Clause 10 **Amendment of s 208 (Restriction about persons to whom permit may be granted)**

This clause amends a note in section 208 of the Wildlife Management Regulation to remove the reference to the dugong plan.

Clause 11 **Amendment of s 220 (Restriction on grant of permit for particular mammals)**

This clause removes the reference in section 220(2) of the Wildlife Management Regulation that refers to the whale and dolphin plan in regard to what is meant by the term ‘minimum distance’ for a whale or dolphin. It now refers to chapter 7, part 5A of the Wildlife Management Regulation (see *clause 16* of the Amendment Regulation) to define what is meant by the term ‘minimum distance’ for a whale or dolphin.

Clause 12 **Amendment of s 262 (Relationship with
conservation plan)**

This clause removes note 2 of section 262(2) of the Wildlife Management Regulation to remove the reference to the dugong plan.

Clause 13 **Amendment of s 302 (Keeping records)**

This clause deletes the word ‘and’ between section 302(a)(i) and section 302(a)(ii) of the Wildlife Management Regulation in accordance with legislative drafting conventions.

Clause 14 **Amendment of s 310 (General restrictions
about movements for which permit may be
granted)**

This clause amends section 310 of the Wildlife Management Regulation to bring the provision from the whale and dolphin plan concerning restrictions on the movement into Queensland of live whales or dolphins other than under approved rehabilitation or scientific purposes, into the Wildlife Management Regulation. These requirements are extended to include live dugongs.

Clause 15 **Replacement of s 322 (Procedure for
accidental taking of marine mammal or
turtle)**

This clause amends section 322 of the Wildlife Management Regulation to provide details on the actions required if a person accidentally takes a marine mammal while undertaking a lawful activity not directed at taking the marine mammal. The person must immediately report the accidental take in the way prescribed in the regulation, regardless of the condition of the animal.

Section 322A provides details on the actions required if a person accidentally takes a marine turtle while undertaking a lawful activity not directed at taking the marine turtle. If the marine turtle is sick, injured, trapped, entangled or dead, or has been struck by a boat, the person must

immediately report the accidental take in the way prescribed in the regulation. If the marine turtle's condition is not consistent with that which is described under section 322A (2)(a) then the person must return it to the waters from which it was taken.

Clause 16 **Insertion of new ch 7, pt 5A (Marine mammals)**

This clause inserts a new part (5A – Marine mammals) to chapter 7 (Other offences relating to wildlife) in the Wildlife Management Regulation and contains provisions that seek to minimise or prevent anthropogenic harassment, disturbance and displacement of marine mammals.

This new part (5A) contains provisions that have been transitioned to the Wildlife Management Regulation from the *Nature Conservation (Whales and Dolphins) Conservation Plan 1997* and the *Nature Conservation (Dugong) Conservation Plan 1999* (collectively, “conservation plans”), including some amendments to these existing provisions and where relevant, the insertion of new provisions.

A key provision of the whale and dolphin plan that has not been carried over to the Wildlife Management Regulation is that of section 10. Section 10 of the whale and dolphin plan prohibits commercial whale watching in Queensland state waters (except within a marine park under a permission granted under the *Marine Parks Act 2004*). This restriction has not been carried across to the Wildlife Management Regulation, meaning the prohibition is removed. Under the amended Wildlife Management Regulation, commercial whale watching will be allowed to occur in state waters outside of a marine park without the requirement for operators to hold a permit or pay fees. Operators will be required to abide by the regulations (including approach distances to marine mammals). It is proposed that commercial whale watching could be additionally managed under a special management declaration if necessary. The Amendment Regulation does not make changes to the existing management framework applying to the management and licensing of commercial whale watching operations within marine parks.

‘Part 5A Marine mammals

‘Division 1 Preliminary

‘338A Application of pt 5A

This section defines the application of the new part 5A. This new part applies to marine mammals in the wild, and in relation to a no approach zone, caution zone or prescribed distance for marine mammals. It relates to a dugong only in situations where a special management declaration provides for a no approach zone, caution zone or prescribed distance for dugongs.

This part does not apply to a person acting under a scientific purposes permit, or a direction given or request made by a conservation officer under section 373.

‘Division 2 Restrictions and requirements for boats

‘Subdivision 1 General restrictions

‘338B Speed limit

This section states that a penalty applies (maximum of 165 penalty units) to a person in control of a boat who brings the boat within a stated distance of a marine mammal at a stated speed that is set by a special management declaration.

**‘338C Restricting path or causing change in
direction of travel of a marine mammal**

A person in control of a boat is prohibited from restricting the path of a marine mammal or causing a marine mammal to change its direction of travel.

This section states that a penalty applies (maximum of 120 penalty units) to a person in control of a boat who intentionally restricts the path of a marine

mammal or causes a marine mammal to change its direction of travel unless the person has a reasonable excuse.

‘338D Dividing a group of marine mammals

The provision in the whale and dolphin plan regarding a prohibition on boats dividing a pod of whales has been extended to include all marine mammals.

A person in control of a boat is now prohibited from dividing a group of marine mammals.

This section states that a penalty applies (maximum of 120 penalty units) to a person in control of a boat who brings the boat between members of a pod of whales or dolphins or a herd of dugongs.

‘Subdivision 2 Distance restrictions

New approach distances have been introduced for boats around dolphins for greater consistency with the *Australian National Guidelines for Whale and Dolphin Watching 2005* and for consistency with regulations in adjacent commonwealth waters that are managed by the Australian Government. An exemption is provided to address situations where dolphins approach boats to bow ride.

Approach distances have been increased for watercraft with the potential to unduly disturb whales and dolphins, such as hovercraft and motorised underwater craft, and these have been included for consistency with other state and commonwealth jurisdictions.

The subdivision also includes speed restrictions. Maximum speeds for boats in proximity to whales and dolphins have been changed for consistency with Maritime Safety Queensland rules, and a requirement for boats to leave no wake in proximity to whales and dolphins has been included.

‘338E **Entering no approach zone for a marine mammal**

This section states that a penalty applies to a person in control of a boat who brings the boat within the no approach zone of a marine mammal. The maximum penalty is 120 penalty units, unless the no approach zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

A ‘no approach zone’ for a marine mammal is defined in Schedule 5 – Dictionary (see *clause 22* of the Amendment Regulation – Amendment of sch 5 (Dictionary)) of the Wildlife Management Regulation. If a special management declaration for a marine mammal or area includes a stated distance for the no approach zone, then the no approach zone is the stated distance.

There are no general approach distances for dugongs. A no approach zone for dugongs can only be implemented under a special management declaration (see *clause 17* of the Amendment Regulation).

‘338F **Entering caution zone for a marine mammal**

This section states that a penalty applies to a person in control of a boat who brings the boat within the caution zone of a marine mammal when there are 3 or more boats already within the zone(s) or when the boat is moving at a speed of more than 6 knots or at a speed that creates a wake.

In some instances, a marine mammal will approach a boat, resulting in the boat being in the no approach zone. To ensure that boat is still included in the 3 boat limit, the caution zone includes the no approach zone for this section.

Schedule 5 – Dictionary (see *clause 22* of the Amendment Regulation – Amendment of sch 5 (Dictionary)) of the Wildlife Management Regulation defines the meaning of the term ‘wake’.

The maximum penalty is 120 penalty units, unless the caution zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

The ‘caution zone’ for whales and dolphins is that which is stated in Schedule 5 – Dictionary (see *clause 22* of the Amendment Regulation – Amendment of sch 5 (Dictionary)) of the Wildlife Management

Regulation. If a special management declaration for a marine mammal or area includes a stated distance for the caution zone, then the caution zone is the area outside the no approach zone but within the stated distance of the caution zone.

A caution zone for dugongs can only be implemented under a special management declaration and is that which is stated in the special management declaration (see *clause 17* of the Amendment Regulation).

'338G Requirement if whale or dugong comes within no approach zone

If a whale or dugong moves towards a boat with the result that the boat is within the no approach zone, the person in control of the boat must behave in a way that is consistent with the directions provided in section '338G (2)(a) and (b).

The maximum penalty for non-compliance is 120 penalty units, unless the no approach zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

This section would only apply to dugongs in the case of a special management declaration specifying a no approach zone for dugongs.

Separate provisions apply to dolphins to allow for a situation where a dolphin approaches a boat to bow ride (refer to section '338I for provisions regarding dolphins approaching boats).

'338H Requirement if a whale or dugong comes within caution zone

If a whale or dugong moves towards a boat with the result that the boat is within the caution zone, the person in control of the boat must behave in a way that is consistent with the directions provided in section '338H (2)(a) or (b).

The maximum penalty for non-compliance is 120 penalty units, unless the caution zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

This section would only apply to dugongs in the case of a special management declaration specifying a caution zone for dugongs.

Separate provisions apply to dolphins to allow for a situation where a dolphin approaches a boat to bow ride (refer to section 338I for provisions regarding dolphins approaching boats).

‘338I Requirement if a dolphin comes within no approach zone or caution zone

This section recognises the potential for dolphins to move towards a boat to bow ride. It provides direction on how a person should operate their boat if a dolphin moves towards the boat. It requires the person in control of the boat to operate the boat in a way that would not disturb the dolphin. For example, changes to direction of travel or speed should be done gradually. It does not prohibit the person from slowing down or stopping the vessel to view the animal, provided it does not constitute disturbance. Examples of what may constitute a sign of disturbance have been included in section 338J of the Amendment Regulation.

The maximum penalty for non-compliance is 120 penalty units, unless the no approach zone or caution zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘338J Requirement if a marine mammal in no approach zone or caution zone or no approach zone shows signs of being disturbed

This section requires a person in control of a boat to withdraw to outside of the caution zone if the marine mammal shows signs of disturbance. It provides examples of what may constitute a sign of disturbance.

The maximum penalty for non-compliance is 80 penalty units, unless the caution zone has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘338K

Exception for approved filming of marine mammals

Exemptions apply to some of the provisions in this new chapter 7 part 5A to allow for an approved person to film marine mammals. This section states that subdivision 2 (Distance restrictions), other than the requirements applying if a marine mammal in a no approach zone or caution zone shows signs of being disturbed, does not apply to a person in control of a boat who brings the boat at a closer distance to a marine mammal than otherwise permitted under this subdivision (within the caution zone or no approach zone) if the person, or another person on the boat, is filming a marine mammal. The person must have the written approval of the chief executive to do so, and must comply with any conditions imposed by the approval.

The maximum penalty for non-compliance is 120 penalty units, unless the no approach zone or caution zone have been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘Division 3

Restrictions and requirements for prohibited vessels and aircraft

‘338L

Minimum distance for a prohibited vessel

This section identifies the minimum distance requirements for a prohibited vessel in the vicinity of a marine mammal. The term ‘prohibited vessel’ is described in Schedule 5 – Dictionary (see *clause 22* of the Amendment Regulation – Amendment of sch 5 (Dictionary)). It includes vessels such as a jet ski, hovercraft, hydrofoil, motorised diving aid, parasail or wing in ground effect craft.

The minimum distance for prohibited vessels around whales and dolphins is 300 metres (prescribed distance) unless otherwise stated in a special management declaration. The minimum distance for prohibited vessels around dugongs is that which is stated in a special management declaration.

The maximum penalty for non-compliance is 120 penalty units, unless the minimum distance has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘338M Minimum distance for a helicopter

This section identifies the minimum distance requirements for helicopters in the vicinity of a marine mammal. The approach distances for helicopters around whales and dolphins are amended for consistency with the *Australian National Guidelines for Whale and Dolphin Watching 2005*. This will allow helicopters to approach whales more closely than previously allowed.

The minimum distance for helicopters around whales and dolphins has been changed from 2000 feet (610 metres) to 500 metres, unless otherwise stated in a special management declaration. The minimum distance for helicopters around dugongs is that which is stated in a special management declaration.

This provision does not apply to helicopters around marine mammals where general civil aviation rules do not allow for the requirements of this section to be met, for example due to take-off and landing requirements.

The maximum penalty for non-compliance is 120 penalty units, unless the minimum distance has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘338N Hovering helicopter

This section prohibits a person in control of a helicopter from hovering above a marine mammal without a reasonable excuse. It aims to prevent disturbance to marine mammals that can be caused by the noise or downdraft from a helicopter that is hovering over a marine mammal or group of marine mammals. The maximum penalty for non-compliance with this provision is 120 penalty units.

‘338O Minimum distance for an aircraft

This section identifies the minimum distance requirements for aircraft in the vicinity of a marine mammal. The minimum distance for aircraft around whales and dolphins is 300 metres unless otherwise stated in a special management declaration. The minimum distance for aircraft around dugongs is that which is stated in a special management declaration. In this section, aircraft does not include a helicopter.

This provision does not apply to aircraft around marine mammals where general civil aviation rules do not allow for the requirements of this section to be met, for example due to take-off and landing requirements.

The maximum penalty for non-compliance is 120 penalty units, unless the minimum distance has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘338P Exception for approved filming of marine mammals

Exemptions apply to some of the provisions in this new chapter 7 part 5A to allow for an approved person to film marine mammals. This section states that division 3 (Restrictions and requirements for prohibited vessels and aircraft), other than the requirement that a person in control of a helicopter must not hover above a marine mammal, does not apply to a person in control of a prohibited vessel or aircraft who brings the vessel or aircraft at a closer distance to a marine mammal than otherwise permitted under this division (within the prescribed distance) if the person, or another person on the vessel or aircraft is filming a marine mammal. The person must have the written approval of the chief executive to do so, and must comply with any conditions imposed by the approval.

The maximum penalty for non-compliance is 120 penalty units, unless the prescribed distance has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

‘Division 4 Other restrictions

‘338Q Minimum distance for people in water

This section identifies what the minimum (prescribed) distance requirements are for people in the water in the vicinity of a marine mammal. The minimum distance for people in or entering the water around whales and dolphins is 100 metres and 50 metres respectively, unless otherwise stated in a special management declaration. The minimum distance for people in or entering the water around dugongs is that which is stated in a special management declaration.

The maximum penalty for non-compliance is 120 penalty units, unless the prescribed distance has been identified by a special management declaration, in which case the maximum penalty is 165 penalty units.

The approach distances for people entering or in the water around whales and dolphins have been amended for consistency with vessel no approach distances. This allows people entering or in the water to approach whales and dolphins more closely than previously allowed.

This provision provides an exemption for people who are feeding dolphins under an authorised feeding activity under section 60A (dolphin feeding program at Tin Can Bay – refer to *clause 8* – insertion of new section 60A) of the Wildlife Management Regulation or under a permission granted under the *Marine Parks Act 2004* (the dolphin feeding program at Tangalooma Island Resort, Moreton Island). Other exemptions include a person acting under a commercial wildlife licence (wildlife interaction) or if the person has a reasonable excuse.

Similar to other exemptions for a person filming a marine mammal (approach distance, prohibited vessel and aircraft restrictions), the minimum distance restriction for people in the water in the vicinity of marine mammals does not apply if the person is entering or in the water for the purpose of filming a marine mammal. The person must have the written approval of the chief executive to do so and must comply with any conditions imposed by the approval.

‘338R **Conducting prohibited activity in a special management area**

This section states that a penalty applies (maximum of 165 penalty units) for carrying out a prohibited activity in a special management area, without a reasonable excuse. A prohibited activity is that which is described as a prohibited activity in the special management declaration for the area.

‘338S **Other restrictions relating to marine mammals**

This section carries over the existing provisions under the whale and dolphin plan that prohibit a person from depositing rubbish or making a sudden or loud noise near a marine mammal, or touching or feeding a

marine mammal. The provisions have been extended to also apply to dugongs. The penalty for non-compliance is a maximum of 80 penalty units.

The provision regarding not feeding a marine mammal in the wild does not apply to the dolphin feeding program at Tin Can Bay (refer to *clause 8* – insertion of section 60A) or the existing dolphin feeding program at Tangalooma Island Resort, Moreton Island, which is authorised under the *Marine Parks Act 2004*.

To maintain consistency with the *Australian National Guidelines for Whale and Dolphin Watching 2005*, the regulation does not provide for the further establishment or expansion of dolphin feeding programs.

Clause 17 **Insertion of new ch 8, pts 5 and 6**

Clause 17 inserts two new parts (5 and 6) into chapter 8 of the Wildlife Management Regulation.

'Part 5 **Special management declarations for marine mammals**

'Part 5 defines the process for making special management declarations for marine mammals (whales, dolphins or dugongs) or areas.

'Division 1 **Preliminary**

'357 **Main purpose of pt 5**

This section defines the main purposes of this new part (5), which are to ensure biologically viable populations of marine mammals are conserved or re-established, minimise harm and distress to marine mammals caused by human activity, and recognise the interest of Aboriginal people and Torres Strait Islanders in marine mammals.

'358 **Achieving main purposes – special management areas**

This section defines how the main purposes are to be achieved in the application of a special management declaration for an area. Section '358(1) specifies the criteria that an area must meet to qualify for a special management declaration.

Section '358(2) specifies activities that can be regulated within an area to achieve the main purposes of a declaration.

'359 **Achieving main purposes – special management marine mammals**

This section defines how the main purposes are to be achieved in the application of a special management declaration for a marine mammal. Section '359(1) specifies the criteria that a marine mammal must meet to qualify for a special management declaration.

Section '359(2) specifies activities that can be regulated within the vicinity of the marine mammal to achieve the main purposes of a declaration.

'Division 2 **Special management areas**

'Subdivision 1 **Special management areas generally**

Areas can be declared permanently or temporarily in response to management or conservation requirements. Introducing a new permanent declaration for an area requires an amendment to schedule 2, part 1 (refer to *clause 20* – insertion of new sch 2 – special management declarations) of the Wildlife Management Regulation. The introduction of any new permanent special management declaration is subject to the regular process for making or amending a regulation.

‘360 Special management area

This section identifies that the area described in schedule 2, part 1 of the Wildlife Management Regulation is a special management area, and that a stated distance for the no approach zone for whales applies in this area.

‘Subdivision 2 Temporary special management areas

Unlike a permanent declaration, introducing a temporary declaration for an area does not require an amendment to the Wildlife Management Regulation. This is because the Amendment Regulation amends the Wildlife Management Regulation to include a process to implement a temporary declaration.

‘361 Declaration of temporary special management area

Section ‘361 defines the process and criteria for implementing a temporary special management area declaration.

The chief executive may declare activities as being restricted or prohibited within the area and may apply a stated distance for the caution zone or no approach zone and a prescribed distance for a prohibited vessel, aircraft or person entering or in the water.

Section ‘361(2) states that the declaration may be made for a maximum period of 60 days.

Section ‘361(4) states that the chief executive may by a gazette notice or a notice published in a newspaper declare a temporary special management area. The chief executive must also publish a copy of the notice on the department’s website (in addition to the gazette notice or newspaper notice) and, if practicable, on a sign in a position that would normally be seen by someone entering the area to which the special management declaration applies. The chief executive may decide to also publish the notice in other ways if considered appropriate.

'362 Form of declaration

This section specifies the details that must be included in the notice when a declaration is made. For example, the notice must identify the limits of the area that is the subject of the declaration, the reasons for the declaration, the requirements under the declaration and the period for which the declaration will be in force.

'363 Term of declaration

This section identifies when a declaration would take effect and how long it would apply for.

'364 Extension of period of declaration

This section identifies the process for extending the period of a temporary declaration for an area if required. The chief executive can extend the declaration beyond 60 days for a further period of not more than 120 days provided consultation occurs with affected stakeholders.

'365 Repeal of declaration

This section states that the chief executive must repeal a temporary special management declaration for an area if the chief executive is satisfied that the reasons for making the declaration no longer exist.

'Division 3 Special management marine mammals

'Subdivision 1 Special management marine mammals generally

A marine mammal can be declared as a special management marine mammal permanently or temporarily in response to management or conservation requirements. Introducing a new permanent declaration for a marine mammal requires an amendment to schedule 2, part 2 (refer to *clause 20* – insertion of new sch 2 – special management declarations) of

the Wildlife Management Regulation. The introduction of any new permanent special management declarations is subject to the regular process for making or amending a regulation.

‘366 Special management marine mammals

This section identifies that the marine mammal described in schedule 2, part 2 of the Wildlife Management Regulation is a special management marine mammal, and that a stated distance for the no approach zone and prescribed distances for a prohibited vessel and an aircraft apply.

‘Subdivision 2 Temporary special management marine mammals

‘367 Declaration of temporary special management marine mammal

Section ‘367 defines the process and criteria for implementing a temporary special management marine mammal declaration.

The chief executive may declare one or more activities as being restricted within the vicinity of the marine mammal(s) and may apply a stated distance for the caution zone or no approach zone and a prescribed distance for a prohibited vessel, aircraft or person entering or in the water.

The chief executive may make a declaration only if it is necessary to meet the main purposes of the part, or if it is necessary to ensure the safety, health and wellbeing of humans.

Section ‘361(2) states that the declaration may be made for a maximum period of one year.

Section ‘367(4) states that the chief executive may by a gazette notice or a notice published in a newspaper declare a temporary special management marine mammal(s). The chief executive must also publish a copy of the notice on the department’s website (in addition to the gazette notice or newspaper notice) and, if practicable, on a sign in a position that would normally be seen by someone entering the area in which the marine mammal the subject of the special management declaration is or is likely to

be located. The chief executive may also decide to publish the notice in another way if considered appropriate.

‘368 **Effect of declaration for a group of marine mammals**

This section applies if a group of marine mammals has been declared to be special management marine mammals. The section states that each of the marine mammals in the group is a special management marine mammal at all times while the mammal remains a member of the group. If a marine mammal that is part of the group leaves the group, then the special management declaration for the group no longer applies to this marine mammal.

‘369 **Form of declaration**

This section specifies the details that must be included in the notice when a declaration is made. For example, the notice must identify the marine mammal(s) that are the subject of the declaration, the reasons for the declaration, the requirements under the declaration and the period for which the declaration will be in force.

‘370 **Term of declaration**

This section identifies when the declaration would take effect and how long it would apply for.

‘371 **Repeal of declaration**

This section states that the chief executive must repeal a temporary special management declaration for a marine mammal(s) if the chief executive is satisfied that the reasons for making the declaration no longer exist.

'Part 6 **Stranded marine mammals**

The provisions contained in the whale and dolphin plan that relate to stranded whales and dolphins have been transitioned into the Wildlife Management Regulation through the amended provisions of part 6. There are no existing provisions in the dugong plan for stranded dugongs.

'372 **Reference to stranded marine mammals in
pt 6**

Section '372 states that a reference to a stranded marine mammal, in this part, includes a marine mammal that is at risk of being stranded. This provision extends the existing provisions of the whale and dolphin plan to include stranded dugongs.

'373 **Powers of conservation officer**

This section outlines the powers of a conservation officer in regard to taking any necessary measures required to protect or deal with a stranded marine mammal.

'374 **Authorised taking, keeping or use of a
stranded marine mammal that is dead or
dies**

This section allows the chief executive to authorise a person to take, keep or use a dead marine mammal to carry out scientific research, or the Queensland Museum to take, keep or use the dead marine mammal to carry out the Museum's research.

Clause 18 **Amendment of sch 1 (processed products)**

This clause renames schedule 1 of the Wildlife Management Regulation in accordance with legislative drafting conventions.

Clause 19 **Renumbering of schs 2 - 4**

This clause renumbers schedules 2, 3 and 4 of the Wildlife Management Regulation, as required as a consequence of the introduction of a new schedule 2 (see *clause 20* – insertion of new sch 2) and the subsequent renumbering of the remaining schedules.

Clause 20 **Insertion of new sch 2**

Clause 20 inserts a new schedule 2 in the Wildlife Management Regulation which provides details of the two permanent special management declarations.

Schedule 2 **Special management declarations**

Part 1 **Special management area**

This part states that the Whitsunday whale protection area is a permanent special management area. This area is a mating and calving area for humpback whales and has been declared a special management area to provide increased protection for mother-calf pairs in the area. The stated distance for the no approach zone in this area is 300 metres. The minimum distance for prohibited vessels and aircraft remains unchanged.

Part 2 **Special management marine mammals**

This part specifies that a humpback whale with a body pigmentation that is over 90% white in colour is a special management marine mammal. Increased approach distances are applied to these animals to mitigate potential harassment of marine mammals with this distinctive feature. The no approach zone for these types of marine mammals is 500 metres. The prescribed distance for a prohibited vessel or an aircraft is 500 metres and 610 metres respectively.

Clause 21 **Amendment of sch 4 (Relevant protected animals)**

This clause amends the reference to schedule 4 of the Wildlife Management Regulation to schedule 5 as a result of the Amendment Regulation introducing a new schedule 2 (see *clause 20* – insertion of new sch 2) and the subsequent renumbering of the remaining schedules (see *clause 19* – renumbering of schs 2 - 4).

Clause 22 **Amendment of sch 5 (Dictionary)**

This clause amends schedule 5 (Dictionary) of the Wildlife Management Regulation.

Clause 22(1) deletes the existing definitions from schedule 5: ‘*dolphin*’, ‘*Dugong Conservation Plan*’ and ‘*Whale and Dolphin Conservation Plan*’.

Clause 22(2) inserts new definitions into schedule 5.

Clause 22(3) – (8) amends a series of references from schedule 3 and schedule 4, required as a result of the Amendment Regulation introducing a new schedule 2 (see *clause 20* – insertion of new sch 2) and the subsequent renumbering of the remaining schedules (see *clause 19* – renumbering of schs 2 - 4).

Part 3 **Amendment of Marine Parks (Great Sandy) Zoning Plan 2006**

Clause 23 **Zoning plan amended**

This clause identifies that this part (3) amends the *Marine Parks (Great Sandy) Zoning Plan 2006*.

Amendments to the *Marine Parks (Great Sandy) Zoning Plan 2006* are required to:

remove references to the whale and dolphin plan and where relevant, replace these references with a reference to the Wildlife Management Regulation; and

Part 4 **Amendment of Marine Parks
(Moreton Bay) Zoning Plan 2008**

Clause 27 **Zoning plan amended**

This clause identifies that this new part (4) amends the *Marine Parks (Moreton Bay) Zoning Plan 2008*.

Clause 28 **Amendment of s 97 (Limited impact
research (non-extractive))**

This clause removes section 97(d) of the *Marine Parks (Moreton Bay) Zoning Plan 2008* as this provision is no longer required. Restrictions relating to marine mammal research already exist under the Wildlife Management Regulation.

Part 5 **Amendment of Marine Parks
Regulation 2006**

Clause 29 **Regulation amended**

This clause identifies that this new part (5) amends the *Marine Parks Regulation 2006*.

Clause 30 **Amendment of s 18 (Restriction on grant of
permission for commercial whale watching
program)**

This clause amends the note contained in section 18 (3) of the *Marine Parks Regulation 2006* to remove the reference to maps contained in the Management Program for the Conservation and Management of Whales and Dolphins in Queensland 1997 – 2001, which no longer exist.

Part 6 **Amendment of State Penalties Enforcement Regulation 2000**

Clause 31 **Regulation amended**

This clause identifies that this new part (6) amends the *State Penalties Enforcement Regulation 2000*.

Clause 32 **Amendment of sch 2 (Environmental legislation)**

This clause removes all entries for the whale and dolphin plan from schedule 2 (Environmental legislation) of the *State Penalties Enforcement Regulation 2000*. This clause inserts infringement notice fines that apply for relevant offences in the Wildlife Management Regulation.

Part 7 **Amendment of Statutory Instruments Regulation 2012**

Clause 33 **Regulation amended**

This clause identifies that this new part (7) amends the *Statutory Instruments Regulation 2012*.

Clause 34 **Amendment of sch 2 (Exemptions from expiry under part 7 of the Act)**

This clause removes the entries relating to the conservation plans from schedule 2, part 2 of the *Statutory Instruments Regulation 2012*.

Part 8 **Repeals**

Clause 35 **Repeals**

This clause repeals the conservation plans.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Heritage Protection.

© State of Queensland 2013