

Marine Parks and Other Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 203

made under the

Fisheries Act 1994

Marine Parks Act 2004

General Outline

Short title

Marine Parks and Other Legislation Amendment Regulation (No. 1) 2014

Authorising law

- Section 223 of the *Fisheries Act 1994*
- Sections 25 and 150 of the *Marine Parks Act 2004*

Policy objectives and the reasons for them

The objectives of the *Marine Parks and Other Legislation Amendment Regulation (No. 1) 2014* are to:

- amend the boundary of the Maroochy declared Fish Habitat Area to reinstate the Fish Habitat Area over tidal parts of two regional parks and make exclusions for erosion control, poor quality habitat and non-tidal (terrestrial) land; and
- enhance access for commercial whale watching operators within Great Sandy and Moreton Bay Marine Parks.

The Maroochy declared Fish Habitat Area was declared in 1974, and last amended in 1999. Boundary amendment is required to:

- make small exclusion areas along Cook Road to allow erosion protection works to be authorised and constructed;
- remove Boggy Creek due to poor fish habitat quality;
- remove non-tidal (terrestrial) land from within the declared Fish Habitat Area; and
- reinstate several protected area land parcels (Eudlo Creek and Coolum Creek Regional Parks) containing tidal lands back into the declared Fish Habitat Area.

New management arrangements are being implemented for commercial whale watching in state marine parks. A key element of these arrangements involves expanding the areas available for commercial whale watching in both the Great Sandy and Moreton Bay Marine Parks.

Achievement of policy objectives

Amendment of the Maroochy declared Fish Habitat Area boundary is implemented by amendment of the plan number in the *Fisheries Regulation 2008*, and the specific land parcels listed for inclusion and exclusion.

In Great Sandy Marine Park, all current area restrictions will be removed, allowing commercial whale watching to occur in all locations within the marine park. In the Moreton Bay Marine Park a small commercial whale watching exclusion area will be retained around Point Lookout on North Stradbroke Island, to support the ongoing and historical importance of Point Lookout as an area for whale research with minimal vessel interaction, and the continuation of land based whale watching activities, unaffected by commercial vessel based operations.

Consistency with policy objectives of authorising law

The amendment is consistent with the objectives of the *Fisheries Act 1994* and the *Marine Parks Act 2004*.

Section 223 of the *Fisheries Act 1994* states that the Governor in Council may make a regulation under the Act. The changes to the Maroochy declared Fish Habitat Area in this Amendment Regulation are consistent with the main objective of the *Fisheries Act 1994*, to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to—

- (a) apply and balance the principles of ecologically sustainable development; and
- (b) promote ecologically sustainable development.

Declaration and management of Fish Habitat Areas, which protect all fish habitats within their boundaries from the impacts of development, is one way in which the objectives of the Act are met.

Section 25(1) of the *Marine Parks Act 2004* states that the Governor in Council may approve an amendment of a zoning plan, if the amendment has been prepared in accordance with the public consultation requirements in sections 26 and 27. However, section 25(3) of the *Marine Parks Act 2004* states that sections 26 and 27 do not apply if the Minister is satisfied there has been adequate consultation about the subject of the amendment. Public consultation on the proposed commercial whale watching changes in the *Marine Parks (Great Sandy) Zoning Plan 2006* and the *Marine Parks Regulation 2006* occurred between 16 May 2014 and 16 June 2014. The final proposed amendment was prepared after considering each submission received. For this proposal the Minister was satisfied there had been adequate levels of public consultation.

Section 150 of the *Marine Parks Act 2004* states that the Governor in Council may make a regulation about “the entry to, or use of, a marine park”. The proposed amendments to the *Marine Parks Regulation 2006* relate to the use of the Moreton Bay and Great Sandy Marine Parks for commercial whale watching.

The Amendment Regulation is consistent with the main objective of the *Marine Parks Act 2004*, “to provide for the conservation of the marine environment”. The amendment removes area restrictions for commercial whale watching in Great Sandy Marine Park,

and reduces the area restrictions in Moreton Bay Marine Park, while still retaining the cap on the number of commercial whale watching authorities that may be issued in the marine parks.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The Amendment Regulation will not result in the need for additional government resources.

The changes to the Maroochy declared Fish Habitat Area will enable the implementation of erosion protection measures plus improved consistency in management by reinstating areas of the Eudlo Creek and Coolum Creek Regional Parks back into the Fish Habitat Area.

These amendments will enable commercial whale watching operators to take advantage of incidental whale sightings and venture into new inshore and offshore areas within the Great Sandy and the Moreton Bay Marine Parks to enhance the experience for passengers and support tourism growth.

Retention of a small whale watching exclusion area around Point Lookout supports minimising any potential impact on long-term humpback whale monitoring programs and land-based tourism.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Consultation did not take place on the proposed amendments to the Maroochy declared Fish Habitat Area as contained in the Regulation. The *Fisheries Act 1994* does not impose any consultation requirements for declared Fish Habitat Area revocations or boundary changes.

However, the proposed amendments to the Maroochy declared Fish Habitat Area in the revised Fish Habitat Area plan (FHA-008 revision 1), which is part of the proposed amendments, to address ongoing erosion are a result of consultation that occurred over a number of years (since 2005) with landholders, the Sunshine Coast Council, the Department of Transport and Main Roads (Maritime Safety Queensland), the Department of Environment and Heritage Protection, and the Department of Agriculture, Fisheries and Forestry.

This consultation was conducted by way of agency / council meetings, site inspections with landholders, a Maritime Safety Queensland reference panel, telephone conversations and conferences and correspondence between stakeholders.

The Sunshine Coast Council and landholders support the proposed changes to the Maroochy declared Fish Habitat Area to address ongoing erosion. No objections were raised by other state agencies.

Public consultation, as required by the *Marine Parks Act 2004*, occurred between 16 May 2014 and 16 June 2014, on the proposed changes to the available areas for commercial whale watching in Great Sandy and Moreton Bay Marine Parks as contained in the Regulation. Consultation was conducted by way of public notices in *The Courier-Mail* and the *Fraser Coast Chronicle*, a discussion paper and question and answer sheet on the Department of National Parks, Recreation, Sport and Racing's website; and information emailed to key stakeholders.

Five submissions were received: two in support of the proposal, two in support of the proposal if an exclusion area at Point Lookout in Moreton Bay Marine Park was retained, and one submission that neither supported nor opposed the proposal.

Two of the five submissions discussed the importance of the Point Lookout area for whale research and land-based tourism at North Stradbroke Island in Moreton Bay Marine Park. Given the historical use of this area for research purposes, and the unique opportunity for research in this area with minimal interaction with other vessels, the Regulation was amended to retain a small portion of the current exclusion area around Point Lookout.

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