

Nature Conservation and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 196

made under the

Environmental Offsets Act 2014

Fisheries Act 1994

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation 2024

Authorising law

Sections 12 and 93 of the *Environmental Offsets Act 2014*

Sections 5, 33, 34 and 223 of the *Fisheries Act 1994*

Sections 76 to 80 and 175 of the *Nature Conservation Act 1992*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The objectives of the *Nature Conservation and Other Legislation Amendment Regulation 2024* (Amendment Regulation) are to:

1. ensure the prescription, conservation status and taxonomy of fauna and flora species reflect current scientific knowledge;
2. strengthen existing regulations for managing human interactions with dangerous native animals;
3. clarify provisions for keeping, dealing and interacting with protected animals; and
4. make other minor, consequential and administrative amendments.

Conservation status of protected wildlife

Sections 76 to 80 of the *Nature Conservation Act 1992* (NC Act) provide for a regulation to prescribe wildlife to classes. The reclassification of Queensland's native wildlife species is a routine process, ensuring that listings under the NC Act are kept up to date with current

knowledge, including population size and trends, risk of extinction, and validity of native status. The conservation status of protected wildlife may be listed by regulation as ‘extinct’, ‘extinct in the wild’, ‘critically endangered’, ‘endangered’, ‘vulnerable’, ‘near threatened’ and ‘least concern’.

The Species Technical Committee (STC) is a panel of experts responsible for undertaking independent scientific assessments to determine the classification of wildlife under the NC Act and making recommendations to the responsible Minister. Following Ministerial approval, schedules 1 and 3 of the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation) and schedule 1 of the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation) must be amended for listings and taxonomy to reflect the most recent recommendations from the STC.

On 22 February 2021, 10 February 2022, and 13 March 2023, the STC made recommendations to the then Minister for the Environment and Great Barrier Reef and Minister for Science and Youth Affairs. On 21 June 2023, 25 September 2023, 10 February 2024, 3 April 2024, and 10 May 2024, the STC made recommendations to the Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation. The recommendations were approved by the respective Ministers on 12 April 2021, 8 March 2022, 5 April 2023, 30 July 2023, 3 November 2023, 10 February 2024, 16 May 2024, and 20 June 2024. The Amendment Regulation has been drafted to implement the reclassification of 38 fauna species and 76 flora species including the prescription of 8 newly protected fish species, as follows:

Fauna

- seven species upgraded to ‘critically endangered’ (Cardwell hairy crayfish; Daintree rainbowfish; eastern curlew; Edgbaston goby; Mary River turtle; night parrot; and redfish);
- sixteen species upgraded to ‘endangered’ (Balan spiny crayfish; black-tailed godwit; brigalow woodland snail; Cairns rainbowfish; Cape heath ctenotus; Cape York rock-wallaby; common greenshank; emerald cling goby; Flecker’s crayfish; Flinders Ranges mogurnda; granite leaf-tailed gecko; Maleny crayfish; Mary River cod; scalloped hammerhead; silver perch; and Western Alaskan bar-tailed godwit);
- eight species upgraded to ‘vulnerable’ (Asian dowitcher; Australian lungfish; Darling Downs giant trapdoor spider; grey plover; Latham’s snipe; ruddy turnstone; sharp-tailed sandpiper; and terek sandpiper);
- one species downgraded to ‘endangered’ (lemuroid ringtail possum);
- four species downgraded to ‘vulnerable’ (great knot; greater large-eared horseshoe bat; Julia Creek dunnart; and red knot);
- one species downgraded to ‘near threatened’ (Endeavour River litter-skink); and
- one species downgraded to ‘least concern’ (littoral whip-tail skink).

Flora

- thirty-four species upgraded to ‘critically endangered’ (*Allocasuarina rigida* subsp. *exsul*; *Asplenium normale*; *Austromuellera valida*; *Backhousia hughesii*; *Bergera crenulata*; *Bulbophyllum windsorensense*; *Bulbophyllum wolfei*; *Cassia* sp. (Como P.Grimshaw+ G507); *Ceratopetalum corymbosum*; *Cinnamomum propinquum*; *Crudia papuana*; *Diospyros areolifolia*; *Elaeocarpus carbinensis*; *Flindersia oppositifolia*; *Gastrodia crebriflora*; *Gossia lewisensis*; *Gossia punctata*; *Kunzea sericothrix*; *Lenwebbia*

- lasioclada*; *Lenwebbia* sp. (Blackall Range P.R.Sharpe 5387); *Lychnothamnus barbatus*; *Musa jackeyi*; *Olearia hygrophila*; *Parapolystichum grayi*; *Ptilotus extenuatus*; *Rhodamnia glabrescens*; *Rhodamnia pauciovulata*; *Rhodamnia spongiosa*; *Ristantia pachysperma*; *Ristantia waterhousei*; *Scleromitrium gibsonii*; *Styphelia malayana* subsp. *Novoguineensis*; *Wetria australiensis*; and *Xylosma craynii*);
- twenty-one species upgraded to ‘endangered’ (*Acacia pubifolia*; *Allocasuarina filidens*; *Berrya rotundifolia*; *Bursaria reevesii*; *Citrus inodora*; *Croton magneticus*; *Dissiliaria tuckeri*; *Dracophyllum sayeri*; *Elaeocarpus thelmae*; *Globba marantina*; *Helicia grayi*; *Helicia lewisensis*; *Hymenophyllum digitatum*; *Ipomoea saintronanensis*; *Kayea larnachiana*; *Lepisanthes senegalensis*; *Litsea granitica*; *Livistona drudei*; *Philotheca sporadica*; *Sarcobolus vittatus*; and *Solanum stenopterum*);
 - two species upgraded to ‘vulnerable’ (*Acacia anadenia*; and *Euodia hylandii*);
 - one species upgraded to ‘near threatened’ (*Acacia grandifolia*);
 - four species downgraded to ‘critically endangered’ (*Corchorus thozetii*; *Embelia flueckigeri*; *Goodenia arenicola*; and *Ptilotus senarius*);
 - one species downgraded to ‘endangered’ (*Amomum queenslandicum*);
 - two species downgraded to ‘vulnerable’ (*Acacia saxicola*; and *Micromyrtus patula*);
 - eight species downgraded to ‘near threatened’ (*Bulbophyllum maxillare*; *Dendrobium malbrownii*; *Ehretia microphylla*; *Eidothea zoxylocarya*; *Grastidium tozerense*; *Jedda multicaulis*; *Pluchea alata*; and *Wodyetia bifurcata*);
 - two species downgraded to ‘least concern’ (*Panicum chillagoanum*; and *Psydrax reticulata*); and
 - one species listing removed (*Amblovenatum tildeniae*) (no longer recognised as a valid species).

Management of protected fish species

The STC recommendations included a number of fish which will become newly protected wildlife under the NC Act. Instead of being regulated as a ‘fish’ under the *Fisheries Act 1994* (Fisheries Act), these species will now be managed in accordance with the NC Act for conservation purposes. Consequential amendments are therefore required under the *Fisheries Declaration 2019* and *Fisheries (General) Regulation 2019* (Fisheries Regulations) to remove references to the Cairns rainbowfish as a ‘particular freshwater fish’ and as ‘fish to be regulated separately’ to avoid regulatory duplication. Other minor amendments to the Fisheries Regulation also include clarifying existing provisions in relation to fees for resources allocation authorities, as well as updating scientific nomenclature for the Mary River cod.

The *Agriculture and Fisheries and Other Legislation Amendment Act 2024* (AFOLA Act) amended the definition of ‘fish’, enabling relevant fish species to be protected under the NC Act, whilst maintaining appropriate management arrangements under the Fisheries Act. Consequential amendments to the Animals Regulation (new section 66A) will provide a general authorisation, allowing relevant protected fish species to be taken, kept, used, and released, if authorised under the Fisheries Act. This reduces regulatory duplication by removing the requirement for an authority under the NC Act for activities that are permitted under the Fisheries Act.

The Amendment Regulation lists the Australian lungfish (vulnerable), scalloped hammerhead (endangered), Mary River cod (endangered), redfish (critically endangered), and silver perch

(endangered) as newly protected wildlife under NC Act. Based on consideration of current take, keep, and use practices, these species will continue to be managed as a fisheries resource under the Fisheries Act to minimise impacts to business and community and ensure conservation outcomes.

Additional consequential amendments to the Fisheries Regulations (new section 4A) are required to prescribe relevant fish and invertebrate species not to be fish under the Fisheries Act. The intent is to clarify that unless otherwise specified, protected animals will be regulated under the NC Act.

The Animals Regulation (section 66) allows certain protected fish species to be kept and used for non-commercial purposes, including accepting or receiving the fish, giving the fish away and moving the fish from where it is being kept to where it is being accepted or received. The amendment maintains the management intent and will include buying and selling as activities that may be carried out in relation to the fish for non-commercial purposes. Such buying and selling should only be to recuperate costs of the recreational keep of the fish; not to gain profit, be a continuous undertaking or any other act aligning with the meaning of commercial purpose under the Animals Regulation.

Management of estuarine crocodiles and K’gari dingoes

Feeding or disturbing dangerous or venomous native animals in the wild are offences under the Animals Regulation and *Nature Conservation (Protected Areas Management) Regulation 2017* (PAM Regulation). The maximum penalty that may be imposed by a Court for such offences when they relate specifically to dingoes on K’gari are higher than the maximum penalty for other animals in recognition of the increased risks associated with such actions when dingoes are involved. In response to public safety concerns relating to feeding or disturbing estuarine crocodiles, the amendments adopt the same model as what is currently applied to dingoes and provide specifically higher maximum penalties for the offence of feeding or disturbing estuarine crocodiles.

The maximum penalty that may be imposed by a Court for disturbing or feeding a crocodile will be 165 penalty units to align with existing penalties for similar offences under the Animals Regulation and PAM Regulation. The amendments also increase the maximum penalty that may be imposed by a Court from 80 to 165 penalty units for feeding or disturbing dingoes on K’gari, to ensure consistency between dingo and crocodile offences. The on-the-spot fine for feeding or disturbing dingoes will remain at 16 penalty units, and the fine for disturbing or feeding crocodiles will also be 16 penalty units. The maximum penalty for interfering with crocodile traps under the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2018* (Crocodile Plan) will also be increased from 120 to 165 penalty units, with an on-the-spot fine of 16 penalty units. The new framework for penalties relating to dingo and crocodile interactions delivers consistency and reflects the serious risk such acts pose to public safety and animal welfare, especially in relation to dingoes on K’gari and estuarine crocodiles.

Currently a person in a protected area or recreation area must ensure food in their possession or under their control is kept in a way that prevents dangerous animals from gaining access to the food. On K’gari, securing food is an important part of a ‘whole-of-island’ management strategy to reduce human-dingo interactions. The amendments to the Animals Regulation will

ensure a requirement to secure food applies consistently for the purposes of managing dingoes on K'gari.

Driving a boat or vehicle within 10 metres of an estuarine crocodile without a reasonable excuse is an offence under the Crocodile Plan. The amendments will introduce a new restriction on remaining within the vicinity of an estuarine crocodile, on or partly on land, without a reasonable excuse. Additionally, conservation officers will have power to direct persons to move away from a crocodile, at their discretion to alleviate any potential human-crocodile interactions. The intention of the amendments is to complement the disturbing offence by capturing situations where there is no apparent 'approach' towards an animal by restricting a person's ability to knowingly remain within close proximity, particularly in relation to iconic or local crocodiles. Persons remaining in proximity to such animals may cause behavioural changes resulting in increased risks to public safety and the welfare of the animals.

A major reason for the removal of problem crocodiles is due to their habituation to food sources, such as discarded fish carcasses. Intentional feeding is already an offence under the Animals Regulation. The amendments to the Crocodile Plan will introduce an offence applying to unintentional feeding (e.g. discarding animal parts or carcasses) at public places, in a way that may attract and habituate an estuarine crocodile. The amendment is intended to be applied at high risk locations where human behaviour has led or is leading to an increased likelihood of crocodiles being habituated to artificial food sources. Enforcement action will complement education and awareness at these sites to reduce unnecessary risk to the community and prevent the removal of animals from the wild.

Overall, these amendments are consistent with implementation of the Queensland Crocodile Management Plan and Fraser Island Dingo Conservation and Risk Management Strategy to ensure the conservation and sustainability of wild populations whilst minimising the risks to human safety and animal welfare, including strong focus on community education and awareness to reduce risks while recreating in crocodile habitat and on K'gari.

Other miscellaneous amendments

Nature Conservation (Animals) Regulation 2020

Amendments are also required to the Animals Regulation to resolve a number of minor drafting errors, ranging from omissions and grammatical errors to provisions that require further clarification to achieve the original policy intent.

The Animals Regulation declares what are considered to be processed products and therefore excluded from the definition of protected animal and associated restrictions under the NC Act. The amendment will declare protected animals lawfully obtained, kept and used by a State museum and registered through a State museum's formal process, as processed products.

Under the Animals Regulation, distances are prescribed that remotely piloted aircraft must keep from marine mammals. The amendment will change the term 'remotely piloted aircraft' to the term 'drone' to be consistent with other legislation under the NC Act and to clarify the intent that all forms of unmanned, easily manoeuvrable aircraft that could be harassing to marine mammals must maintain the prescribed distance.

Environmental Offsets Regulation 2014

The Amendment Regulation also makes a consequential amendment to the *Environmental Offsets Regulation 2014* (Offsets Regulation) to extend the definition of ‘person with an interest in the land’. Before declaring an environmental offset protection area under section 30 of the *Environmental Offsets Act 2014* (Offsets Act), consent is required from a range of persons with an interest in the land. Consent is presently required from the Chief Executive of the departments administering the *Forestry Act 1959* where the offset will occur within a forest entitlement area, State Forest, or timber reserve but not ‘forest consent areas’.

Extending the definition to include forest consent areas will mean that where an environmental offset is proposed within these areas, consent will be required from the Chief Executive of the *Forestry Act 1959* before the environmental offset protection area is declared. This amendment will not have a significant impact on the operation of the framework as the amendment seeks to align with existing restrictions on the use of forest consent areas.

An amendment to section 6 of the Offsets Regulation prescribes a new version of the Environmental Offsets Policy (Offsets Policy). The new version of the Offsets Policy reflects the following reforms which seek to clarify and simplify requirements for environmental offsetting by:

- enabling fauna species to be co-located where a conservation outcome can be achieved;
- enabling improvement of regional ecosystems in a higher class than those impacted;
- clarifying that landholders may voluntarily legally secure advanced offsets;
- acknowledging existing requirements under cultural heritage legislation to consider First Nations peoples’ rights;
- clarifying requirements to publish offset delivery plans and associated reports on relevant websites; and
- minor structural updates to consolidate requirements and remove duplication.

Nature Conservation (Protected Areas Management) Regulation 2017

Minor amendments to the PAM Regulation correct an inconsistency to ensure regulations dealing with interactions with animals in the wild that are dangerous, venomous or capable of injuring a person, such as crocodiles, are applied consistently across all protected area tenures.

State Penalties Enforcement Regulation 2014

Amendments to the *State Penalties Enforcement Regulation 2014* (SPE Regulation) increase infringement notice fines to reflect the increased maximum penalties for estuarine crocodile offences. The amendments will also introduce infringement notice offences corresponding to the new K’gari dingo and estuarine crocodile offences under the Animals Regulation, Crocodile Plan, and PAM Regulation.

Additionally, new infringement notice offences will be introduced, corresponding to existing administrative offences under the Offsets Act. Appropriate infringement notice offences provide a cost-effective method of enforcement, aiding compliance and deterring inappropriate and unacceptable behaviour.

Achievement of policy objectives

To achieve its objectives, the Amendment Regulation amends:

1. The conservation status of wildlife under the Animal Regulation, Plants Regulation and Fisheries Regulation by:
 - updating the conservation status of native fauna and flora species to reflect recent scientific assessments against criteria outlined under sections 76 to 80 of the NC Act;
 - updating the taxonomy of native flora and fauna species and provide nomenclature updates to reflect current scientific knowledge; and
 - establishing appropriate management arrangements for protected fish species that have a presence in the fishing industry.
2. Offences relating to dangerous animals under the Animals Regulation, Crocodile Plan, PAM Regulation and SPE Regulation by:
 - increasing the maximum penalties for feeding and disturbing dangerous animals, and tampering with crocodile traps;
 - introducing new offences for remaining in close proximity of an estuarine crocodile and discarding food or waste in a way that may attract an estuarine crocodile;
 - introducing a new offence for not securing food from dingoes on K’gari;
 - adjusting infringement notice fines in accordance with the increased maximum penalties for estuarine crocodile offences; and
 - introducing new infringement notice offences corresponding to the new estuarine crocodile and dingo on K’gari offences.
3. Provisions relating to dealing with animals under the Animals Regulation by making amendments to clarify:
 - certain protected fish species may be kept and used for non-commercial purposes;
 - protected animal specimens registered by a State museum are processed products; and
 - the definition of ‘drone’ (previously ‘remotely piloted aircraft’) includes all forms of unmanned, easily manoeuvrable aircraft.

In addition, the Amendment Regulation will achieve the objectives by making other minor, consequential and administrative amendments to subordinate legislation under the Fisheries Act, Offsets Act and *State Penalties Enforcement Act 1999* (SPE Act).

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objective of the NC Act; that is, to ensure the conservation of nature while allowing for the involvement of First Nations peoples in the management of protected areas in which they have interest under Aboriginal tradition or Island custom.

The Amendment Regulation is consistent with the objective of the Offsets Act which is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.

The Amendment Regulation is consistent with the objective of the Fisheries Act which is to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats.

The Amendment Regulation is consistent with the objective of the SPE Act which is to maintain the integrity of fines as a viable sentencing or punitive option for offenders; provide confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and reduce the cost to the State of enforcing fines and other money penalties.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation.

Benefits and costs of implementation

The Amendment Regulation will ensure that the prescription, conservation status, and taxonomy of fauna and flora species reflect current scientific knowledge. Without the amendments, there is a risk that, over time, conservation and land use requirements applied based on inaccurate species classifications may be ineffective where the species is being upgraded to a more threatened status, or unnecessary where a species is being downgraded to a less threatened or non-threatened status. The reclassifications are not anticipated to impose significant costs on the community, business, or government. The changes are necessary to achieve the objectives of the NC Act, particularly the protection of native wildlife and its habitat, as well as the appropriate management of other types of wildlife.

In general, the Amendment Regulation is beneficial to the continued keep and use of lawfully obtained animals by business and community, and the State will have greater capacity to respond to unlawful take, keep, use and interference with native wildlife. The resourcing costs for compliance are also negligible because they can be incorporated into the ongoing compliance costs of the government.

As per *The Queensland Government Better Regulation Policy*, amendments to the Offsets Regulation, Animals Regulation, Plants Regulation, Fisheries Declaration and Fisheries General Regulation did not require further regulatory impact analysis as these amendments are minor and machinery in nature. Further regulatory impact analysis was provided for the offence related amendments to the Animals Regulation, Crocodile Plan, PAM Regulation, SPE Regulation and Offsets Act as these amendments have some (but not significant) impacts.

Implementing the Amendment Regulation is in the public interest, is not considered to constitute significant subordinate legislation and will have negligible costs.

Consistency with fundamental legislative principles

This Amendment Regulation is consistent with fundamental legislative principles as defined in section 24 of the *Legislative Standards Act 1992* and has no adverse impacts on the rights and liberties of individuals or on the institution of Parliament.

Consultation

Amendments to the reclassification of wildlife are administrative and reflect the scientific assessment of the STC. The chair of the STC was consulted to confirm details of species reclassifications and nomenclature for species. Other associated amendments did not require consultation as they are consequential or minor in nature.

Consultation was undertaken with key stakeholders to determine appropriate management approaches for newly protected fish species and to evaluate threats to conservation outcomes.

Targeted consultation was undertaken in relation to the estuarine crocodile and K'gari dingo regulatory response changes. Key stakeholders included First Nations representatives (Indigenous Corporations, Indigenous Land and Sea Rangers), local government areas, conservation groups and tourism industry. No concerns were raised with all submissions received voicing support for the proposed changes.

No external consultation was undertaken for the amendments to the SPE Regulation or the updates to the Offsets Regulation and Offsets Policy.

The Office of Best Practice Regulation was notified of the proposed amendments, and Impact Analysis Statements prepared for relevant matters.