



Environment Protection and Biodiversity Conservation Amendment Regulations 2006 (No. 1)¹

Select Legislative Instrument 2006 No. 131

I, PROFESSOR MARIE BASHIR, AC, CVO, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Environment Protection and Biodiversity Conservation Act 1999*.

Dated 14 June 2006

MARIE BASHIR
Administrator

By Her Excellency's Command

IAN CAMPBELL
Minister for the Environment and Heritage

1 Name of Regulations

These Regulations are the *Environment Protection and Biodiversity Conservation Amendment Regulations 2006 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Environment Protection and Biodiversity Conservation Regulations 2000*

Schedule 1 amends the *Environment Protection and Biodiversity Conservation Regulations 2000*.

Schedule 1 Amendments

(regulation 3)

[1] Division 8.1

substitute

8.1 Interacting with cetaceans

8.01 Purpose of Division 8.1

For paragraph 247 (d) of the Act, this Division provides for the protection and conservation of cetaceans.

8.01A Interpretation

For this Division:

cetacean does not include a part of a cetacean or product of a cetacean.

8.02 Application of Division 8.1

This Division applies in the Australian Whale Sanctuary, except in the coastal waters, or a part of the coastal waters, of a State, or the Northern Territory, if a declaration under section 228 of the Act is in force for the coastal waters or part of those waters.

8.03 Offences in this Division

- (1) A person does not contravene a provision of this Division only because the person is undertaking:
 - (a) an activity mentioned in paragraph 231 (c), (d), (e) or (f) of the Act; or
 - (b) an activity mentioned in paragraph 231 (a), (b) or (h) of the Act and the activity could not be undertaken at a time or in a way to avoid contravening the provision.
- (2) A person in the Great Barrier Reef Marine Park does not contravene a provision of this Division if the person to whom the provision would apply has an exemption, in force at the time, issued to the person by the Great Barrier Reef Marine Park Authority under regulation 117K of the *Great Barrier Reef Marine Park Regulations 1983*.

8.04 Prohibited vessel

- (1) This regulation applies to a person who is operating a prohibited vessel.
- (2) A prohibited vessel must not approach closer than 300 metres to a cetacean.
- (3) A prohibited vessel must move, at a constant slow speed, away from a cetacean that is approaching so that the vessel remains at least 300 metres away from the cetacean.
- (4) If a prohibited vessel is operated in a way that contravenes subregulation (2) or (3), the person operating the vessel is guilty of an offence.

Penalty: 50 penalty units.

- (5) An offence under subregulation (4) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

8.05 Other craft — adult cetaceans

- (1) This regulation applies:
- (a) to a person who is operating a vessel that is not a prohibited vessel; and
 - (b) in relation to cetaceans other than calves.

Note Regulation 8.06 contains special provisions for calves.

- (2) Within the caution zone for a cetacean to which this regulation applies, the person must:
- (a) operate the vessel at a constant slow speed and minimise noise; and
 - (b) make sure the vessel does not drift or approach closer to the cetacean than:
 - (i) for a dolphin — 50 metres; or
 - (ii) for a whale — 100 metres; and
 - (c) if the cetacean shows signs of being disturbed, immediately withdraw the vessel from the caution zone at a constant slow speed; and
 - (d) if there is more than 1 person on the vessel, post a lookout for cetaceans; and
 - (e) subject to paragraph (b), approach the cetacean only:
 - (i) from the rear, no closer than 30 degrees to its observed direction of travel; or
 - (ii) by positioning the vessel ahead of the cetacean at more than 30 degrees from its observed direction of travel; and
 - (f) make sure the vessel does not restrict the path of the cetacean; and
 - (g) make sure the vessel is not used to pursue the cetacean.

Penalty: 50 penalty units.

Note If a cetacean approaches a vessel or comes within the limits mentioned in paragraph (2) (b), subregulations (4) and (5) apply.

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- (3) The person must not enter the caution zone of a cetacean to whom this regulation applies if there are already 3 vessels in the caution zone.

Penalty: 50 penalty units.

- (4) If a whale (other than a calf) approaches the vessel or comes within the limits mentioned in paragraph (2) (b), the person must:
- (a) disengage the gears and let the whale approach; or
 - (b) reduce the speed of the vessel and continue on a course away from the whale.

Penalty: 50 penalty units.

- (5) If a dolphin (other than a calf) approaches the vessel or comes within the limits mentioned in paragraph (2) (b), the person must not change the course or speed of the vessel suddenly.

Penalty: 50 penalty units.

- (6) It is a defence to an offence against paragraph (2) (b) that the cetacean has approached the vessel.

- (7) An offence under subregulation (2), (3), (4) or (5) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

8.06 Other craft — calves

- (1) This regulation applies to a person who is operating a vessel that is not a prohibited vessel.
- (2) The person must not allow the vessel to enter the caution zone of a calf.

Penalty: 50 penalty units.

- (3) If a calf appears within an area that means the vessel is then within the caution zone of the calf, the person:
- (a) must immediately stop the vessel; and
 - (b) must:
 - (i) turn off the vessel's engines; or

- (ii) disengage the gears; or
- (iii) withdraw the vessel from the caution zone at a constant slow speed.

Penalty: 50 penalty units.

- (4) It is a defence to an offence against subregulation (2) that the calf has approached the vessel.
- (5) An offence under subregulation (2) or (3) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

8.07 Aircraft

- (1) This regulation applies to a person who is operating an aircraft.
- (2) The person:
 - (a) must not operate the aircraft (other than a helicopter or gyrocopter) at a height lower than 1 000 feet within a horizontal radius of 300 metres of a cetacean; and
 - (b) must not operate a helicopter or gyrocopter at a height lower than 1 650 feet or within a horizontal radius of 500 metres of a cetacean; and
 - (c) must not allow the aircraft to approach a cetacean from head on; and
 - (d) if the aircraft can land on water, must not land the aircraft on water so that the aircraft comes within the radius of a cetacean mentioned in paragraph (b).

Penalty: 50 penalty units.

- (3) An offence under subregulation (2) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

8.08 Feeding

- (1) A person must not feed, or attempt to feed, a cetacean.

Penalty: 50 penalty units.

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- (2) An offence under subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) does not apply to the routine discarding of bycatch by a commercial fisher if he or she makes reasonable efforts to avoid discarding bycatch near a cetacean.
- (4) For subregulation (1), *feed* includes to throw food or rubbish into the water near a cetacean.

8.09 Touching and sudden movements

- (1) A person must not:
- (a) touch a cetacean; or
 - (b) make sudden movements within 2 metres of a cetacean.

Penalty: 50 penalty units.

- (2) An offence under subregulation (1) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

8.09A Swimming with cetaceans

- (1) This regulation applies to a person who is entering the water, or in the water.

- (2) The person must not enter the water within 100 metres of a whale or within 50 metres of a dolphin.

Penalty: 50 penalty units.

- (3) The person must not, while in the water, approach within 30 metres of a cetacean.

Penalty: 50 penalty units.

- (4) If a cetacean comes within 30 metres of a person in the water, the person:

- (a) must move slowly to avoid startling the cetacean; and

(b) must not touch the cetacean or swim towards it.

Penalty: 50 penalty units.

(5) An offence under subregulation (3) or (4) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

[2] Regulation 8.10, note

omit

[3] Regulation 8.11

substitute

8.11 Application of Division 8.2

This Division applies in the Australian Whale Sanctuary, except in the coastal waters, or a part of the coastal waters, of a State, or the Northern Territory, if a declaration under section 228 of the Act is in force for the coastal waters or part of those waters.

[4] Subregulation 8.12 (1)

omit

restricted craft

insert

prohibited vessel

[5] Subregulation 8.12 (2)

omit

8.04.

insert

8.05.

[6] Subregulation 8.12 (3)

omit

8.05.

insert

8.07.

[7] Subregulation 8.12 (4)

omit

8.06, 8.07, 8.08 and 8.09.

insert

8.08, 8.09 and 8.09A.

[8] Dictionary, definition of *bow-ride*

omit

[9] Dictionary, definition of *calf*

substitute

calf, for a cetacean, means an animal not more than half the length of an adult of the species.

[10] Dictionary, definition of *caution zone*

substitute

caution zone, for a cetacean, means an area around the cetacean with a radius of:

- (a) for a dolphin — 150 metres; and
- (b) for a whale — 300 metres.

[11] Dictionary, definition of *dolphin*

substitute

dolphin means a member of the family Delphinidae or the family Phocoenidae.

[12] Dictionary, definition of *large whale*

omit

[13] Dictionary, definition of *porpoise*

omit

[14] Dictionary, after the definition of *progeny*

insert

prohibited vessel means any of the following:

- (a) a jet ski;
- (b) a parasail;
- (c) a hovercraft;
- (d) a hydrofoil;
- (e) a wing-in-ground-effect craft;
- (f) a motorised diving aid (for example, a motorised underwater scooter).

[15] Dictionary, definition of *restricted craft*

omit

[16] Dictionary, definition of *whale*

substitute

whale means a cetacean other than a dolphin.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.