

Great Barrier Reef Marine Park Regulations (Amendment) 1993 No. 266

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 266

Issued under the authority of the Minister for the Environment, Sport and Territories

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Regulations (Amendment)

The purpose of the Great Barrier Reef Marine Park Regulations (Amendment) is to ensure that permission holders can access the Marine Park for the purpose specified in the permission, to require applicants for permissions where advertising is required to advertise in a way that increases the effectiveness of the advertising, to more fully particularise what conditions may attach to permissions and in what circumstances the conditions of permissions may be varied with the consent of the permission holder.

The amendment further defines what constitutes a permanently moored facility for the purposes of the Cairns section zoning plan. In relation to the use of licenced fishing tenders in protected zones of the Marine Park, the amendment also makes the master of the primary fishing vessel liable if the tender is found unattached in a protected zone. The excuse provisions are also clarified.

The amendments also clarify the process and nature of permission transfers, enable the Authority to seek further information before it decides whether to approve those transfers and makes minor consequential amendments for the purpose of permission transfers. Amendments are also made to the permission suspension and revocation powers to allow for such action to be taken for non-payment of the environmental management charge, failure to lodge charge returns and failure to comply with conditions of approval of transfer.

Amendments are made to Part 5A to ensure that visitors are not counted twice for the purpose of determining a permission holders liability to pay charge, to enable the Authority to refund overpayments of the charge, and to require permit holders only to keep records of the days when they use their permissions and to make further amendments to the Regulations as outlined below.

Regulation 1 - Amendment

This proposed Regulation provides for the Great Barrier Reef Marine Park Regulations to be amended.

Regulation 2 - Regulation 5 (Permission requirements to be observed - zoned area)

This proposed Regulation amends subregulation 5(1) so that permissions granted under regulation 15D are declared to be permissions to which section 38B of the Act applies. This amendment is necessary to ensure that the permissions granted under regulation 15D are effective in granting permission to access or use part of the Marine Park.

Regulation 3 - Regulation 9 (Advertising of application)

This proposed Regulation amends subregulation 9(3) so that where an applicant for a permit is required to give public notice of the proposal, the notice will be placed in the prescribed publications at times at least seven days apart. This is to maximise the chance that the public will see the notice.

Regulation 4 - Regulation 11 (Grant or refusal of relevant permission)

This proposed Regulation amends regulation 11 to:

- a) clarify the types of conditions which can be attached to a permission to ensure protection of the Marine Park by allowing the Authority to require that the permit holder give an undertaking in respect of certain aspects of their use of the Park; and
- b) incorporate a consequential amendment that arose as a result of the addition of a new regulation 20A in statutory rules 206 of 1993; the provision allows the Authority to vary the conditions of a permit with the permit holder's consent.

New Regulation 13ABA (Zoning plan definition - permanently

Regulation 5 moored facility)

This proposed Regulation adds a new regulation 13ABA to define the term permanently moored facility" for the purposes of the Cairns Section zoning plan.

Regulation 6 - Regulation 13AD (Advertising of application)

This proposed Regulation amends regulation 13AD to clarify, in relation to the advertising of certain applications to use and enter the Marine Park, where and when public notices are to be placed.

Regulation 7 - Regulation 13AF (Grant or refusal of relevant permission)

This proposed Regulation amends regulation 13AF to:

- a) clarify the types of conditions which can be attached to a permission to ensure protection of the Marine Park by allowing the Authority to require that the permit holder give an undertaking in respect of certain aspects of their use of the Park; and
- b) incorporate a consequential amendment that arose as a result of the addition of a new Regulation 20A in statutory rules 206 of 1993; the provision allows the Authority to vary the conditions of a permit with the permit holder's consent.

Regulation 8 - Regulation 13F (Grant or refusal of permission - unzoned area)

This proposed Regulation amends regulation 13F to:

- a) clarify the types of conditions which can be attached to a permission to ensure protection of the Marine Park by allowing the Authority to require that the permit holder give an undertaking in respect of certain aspects of their use of the Park; and
- b) incorporate a consequential amendment that arose as a result of the addition of a new regulation 20A in statutory rules 206 of 1993; the provision allows the Authority to vary the conditions of a permit with the permit holder's consent.

Regulation 9 - Regulation 14A (Tender commercial fishing vessels)

This proposed Regulation amends regulation 14A to clarify the wording of subparagraphs 14A(2)(a)(ii) and (iii). It also adds a new subregulation 14A(4) to make it clear that when a tender commercial fishing vessel is in a specified protected zone and is not attached to the primary commercial fishing vessel, the person in charge of the tender and the master of the primary commercial fishing vessel are each guilty of an offence.

Regulation 10 - Regulation 15D (Grant or refusal of permission)

This proposed Regulation amends regulation 15D to:

- a) particularise more fully what kinds of conditions may be attached to a permit; and
- b) incorporate a consequential amendment that arose as a result of the addition of a new regulation 20A in statutory rules 206 of 1993; the provision allows the Authority to vary the conditions of a permit with the permit holder's consent.

Regulation 11 - Regulation 19C (Authorities)

This proposed Regulation amends subregulation 19C(1) to remove any doubt that persons to whom permissions have been transferred are also covered by the Regulation.

Regulation 12 - Regulation 19D (Permission taken not to have expired)

This proposed Regulation amends paragraph 19D(1)(a) to remove any doubt that persons to whom permissions have been transferred are also covered by the Regulation. The amendment also adds permissions granted under regulation 13F to the list of prescribed permissions covered by the Regulation.

Regulation 13 - Regulation 19E (Transfer of permissions)

This proposed Regulation amends Regulation 19E in the following ways:

A new subregulation 19E(1) is proposed that allows holders of chargeable permissions to transfer their interest in a permission to another person with the approval of the Authority except where the permission is suspended or where it temporarily remains in force due to the effect of regulation 19D.

Subregulation 19E(3) is amended to add two further matters which the Authority is required to have regard to in deciding whether or not to approve the transfer. The additional matters are:

- (a) whether the transferor has not paid a charge which is overdue for payment; and
- (b) the need to ensure the orderly and proper management of the Marine Park.

Subregulation 19E(4) is amended to allow the time period in which the Authority has to decide whether to approve or not a transfer, to be extended in accordance with the proposed Regulation 19F. The subregulation is also amended to make it clear that the transfer represents the grant of a permission to the transferee. The permission as granted is to be in identical terms to the former permission except that the conditions of the permission may be varied with the consent of the transferee.

Paragraph 19E(5)(b) is amended to further particularise the kinds of conditions which may attach to an approval of transfer of the permit.

Subregulation 19E(6) is added to clarify the nature of the permission for the purposes of the Act and specify the date on which the permission is deemed to have been granted.

Subregulation 19E(7) is added to ensure that the conditions of a permission once transferred can be varied with the consent of the permit holder.

Subregulation 19E(8) is added to require, for public information, that approvals of transfer are notified in the *Gazette*.

Subregulation 19E(9) is added to require that existing instruments of permission are surrendered by the former permission holders no later than one day after the transfers take effect.

Regulation 14 - New regulation 19F (Insufficient information relating to application for approval)

This proposed regulation 19F allows the Authority to seek further information in relation to an application for transfer. If the information is not provided before the end of 60 days after the request is made the application is taken to have been withdrawn by the applicants.

Regulation 15 - Regulation 20 (Suspension of permission - endangerment of Marine Park)

This proposed Regulation amends Regulation 20 to clarify that it applies to permissions transferred under regulation 19E.

Regulation 16 - Regulation 20A (Suspension of permission, etc, - non compliance with a condition)

This proposed Regulation amends subregulation 20A(1) to allow the Authority to suspend a transferred permission where the transferee has failed to comply with a condition of approval of transfer. Subregulation 20A(5) is amended to ensure that the suspension of permission is ended when the Authority is satisfied that the permit holder is complying with the condition.

Regulation 17 - Regulation 20B (Suspension of permission under which charge is owing)

This proposed Regulation amends regulation 20B by allowing the Authority to suspend a chargeable permission if the charge is not wholly paid by the end of the calendar month in which it was due for payment or the charging return required to be lodged under subregulation 53(1) or (2) by the same date is not given to the Authority.

Regulation 18 - Regulation 21 (Revocation of permission)

This proposed Regulation amends subregulation 21 (1) by allowing the Authority to revoke a permission which was suspended under subregulation 20A(1) if the breach of condition which brought about the suspension of the permission is still continuing 60 days after the date of suspension.

The proposed subregulation 21(1AA) is added to allow the Authority to revoke or vary a permission for a failure to comply with a condition of a permission (as is the case at present) or a condition of approval of a transfer despite regulations 20A and 21(1). Subregulation 21(1B) is also amended to refer to the proposed paragraph (1AA)(a).

Subregulation 21(1C) is amended to allow the Authority to revoke a chargeable permission which has been suspended under regulation 20B if the permission holder has not taken action, within 60 days of the date of suspension, that would enable the suspension to be withdrawn. Subregulation 21(2) is also amended to accommodate the amendments to the Regulation.

Regulation 19 - Regulation 26 (Assessment of impact of activities in the Marine Park)

This proposed Regulation adds subregulation 26(2) so that an additional assessment is not required in respect of a permission granted pursuant to the transfer provisions of regulation 19E.

Regulation 20 - Regulation 27 (Interpretation of this Part and Schedule 4)

This proposed Regulation amends regulation 27 so that it applies not only to persons to whom a permission was originally granted but also to persons to whom the permission was subsequently transferred.

Regulation 21 - Regulation 34 (Interpretation)

This proposed Regulation amends subregulation 34(1) so that the correct subsection of the Act is referred to and to replace a semi-colon at the end of the subregulation with a full stop.

Regulation 22 - Regulation 37 (Standard tourist program charge)

This proposed Regulation amends subregulation 37(2A) so that where a visitor solely undertakes activities covered by Regulations 41, 42 or 46, the permit holder is not required to count them for the purpose of determining his or her liability to pay charge under regulation 37.

Regulation 23 - Regulation 40 (Motorised water sports charges)

This proposed Regulation amends subregulation 40(1) by inserting "of" after "hiring" and by removing the restrictive requirement that a permit holder must not hold a permission of any other kind before the flat rate charge applies.

Regulations 24, 25, 26 and 27 - Regulations 41, 42, 43, and 46 (Semi-submersible and glassbottomed boats, Sight-seeing aircraft, Pontoon, and Underwater observatory charges)

These proposed Regulations amend regulations 41, 42, 43, and 46 so that where a visitor undertakes one or more excursions on the same day with the same permission holder the visitor is to be counted only once for the purpose of determining the permit holders liability to pay the charge.

Regulation 28 - Regulation 47 (Lady Elliott Island charges)

This proposed Regulation amends regulation 47 to correct the spelling of the word "Elliot".

Regulation 29 - Regulation 50 (Vending operations charges)

This proposed Regulation amends regulation 50 by inserting a comma after the number 37.

Regulation 30 - Regulation 51B (Overpayment of charge)

This proposed Regulation amends regulation 51B so that the Authority can refund any overpayment of a charge or credit it against the next quarterly instalment due.

Regulation 31 - Regulation 52 (Record-keeping)

This proposed Regulation amends subregulation 52(1) so that holders of chargeable permissions only have to record the information required to be recorded by the Authority on each day on which the permission is used by the holder.

Regulation 32 - Schedule 1

This proposed Regulation amends Schedule 1 so that it correctly refers to subregulation 13AB(1) instead of 3AB(1).

Regulation 33 - Schedule 1B

This proposed Regulation amends Schedule 1 B so that the correct common name of the shell is used.

Regulation 34 - Schedule 1C

This proposed Regulation amends Schedule 1C so that the correct species and taxon are excepted.

Regulation 35 - Schedule 1D

This proposed Regulation omits Schedule 1D which is no longer referred to in the Regulations following amendments made in statutory rule 206 of 1993.