



2002B00173

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Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 4)¹

Statutory Rules 2002 No. ²

177/

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Great Barrier Reef Marine Park Act 1975*.

Dated 25 JUL 2002 2002

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

DAVID KEMP

Minister for the Environment and Heritage

Regulation 1

1 Name of Regulations

These Regulations are the *Great Barrier Reef Marine Park Amendment Regulations 2002* (No. 4).

4/

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Great Barrier Reef Marine Park Regulations 1983*

Schedule 1 amends the *Great Barrier Reef Marine Park Regulations 1983*.

Schedule 1 Amendment

(regulation 3)

[1] Regulation 41

substitute

41 Tender commercial fishing vessels

- (1) A tender commercial fishing vessel that is in a non-fishing area of the Marine Park must be under tow by, or otherwise physically attached to, the primary commercial fishing vessel in association with which the tender vessel is licensed or used.
- (2) The master of a primary commercial fishing vessel in association with which a tender commercial fishing vessel is licensed or used is guilty of an offence if the master fails to have the tender vessel under tow by, or otherwise physically attached to, the primary vessel when the tender vessel is in a non-fishing area of the Marine Park.

Penalty: 50 penalty units.

- (3) A person who holds a licence or other permission (however described) in force under a Commonwealth, State or Territory law, permitting a primary commercial fishing vessel to be used to take fish for commercial purposes is guilty of an offence if a tender commercial fishing vessel, that is licensed or used in association with that primary vessel, is in contravention of subregulation (1).

Penalty: 50 penalty units.

- (4) A person is guilty of an offence if the person is in or on a tender commercial fishing vessel that is in contravention of subregulation (1).

Penalty: 50 penalty units.

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

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

- (6) It is a defence to a prosecution under subregulation (2), (3) or (4) if, throughout the period when the tender commercial fishing vessel was in contravention of subregulation (1), it was engaged in:

- (a) the rescue, or attempted rescue, of an endangered person; or
- (b) the provision of assistance to an endangered aircraft, vessel or other structure to prevent or mitigate the occurrence of damage to the environment or to the aircraft, vessel or structure; or
- (c) the conveyance of a person on a direct journey from land to the primary commercial fishing vessel, or from the primary vessel to land, provided that, throughout the period of the conveyance, the primary vessel was within 1 nautical mile of both the tender vessel and the land (not including any coral reefs).

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (6) (see subsection 13.3 (3) of the *Criminal Code*).

(7) In this regulation:

non-fishing area of the Marine Park means:

- (a) a zone described in a zoning plan as:
 - (i) Marine National Park 'B' Zone; or
 - (ii) National Park Zone; or
 - (iii) Scientific Research Zone; or
 - (iv) Preservation Zone; or
- (b) any other area of the Marine Park where the taking of fish for commercial purposes is not permitted.

primary commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether in force or not) has been issued under a Commonwealth, State or Territory law, permitting the vessel to be used to take fish for commercial purposes; or
- (b) a vessel that is used to take fish for commercial purposes.

take, in relation to fish, includes:

- (a) catch, capture, gather or obtain fish by any means; or
- (b) engage in conduct or an operation that results in the death of fish.

tender commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether in force or not) has been issued under a Commonwealth, State or Territory law, permitting the vessel to be used in association with a primary commercial fishing vessel; or
- (b) a vessel that is used in association with a primary commercial fishing vessel.

Notes

1. These Regulations amend Statutory Rules 1983 No. 262, as amended by 1985 No. 169; 1986 No. 1; 1987 No. 247; 1988 No. 185; 1989 Nos. 269, 367 and 368; 1990 Nos. 9 and 35; 1991 Nos. 63, 257 and 296; 1992 No. 69; 1993 Nos. 188, 206 and 266; 1996 No. 277; 1997 Nos. 96 and 326; 1999 No. 252; 2000 No. 5; Act No. 137, 2000; Statutory Rules 2001 Nos. 12, 178, 197 and 307; 2002 Nos. 8, 72, 73 and 112.
2. Notified in the *Commonwealth of Australia Gazette* on *L* 2002. 1 August/