

Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 7) 2002 No. 338

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 338

ISSUED BY AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT AND HERITAGE

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 7)

Subsection 66(1) of the *Great Barrier Reef Marine Park Act 1975* (the Act) provides that the Governor-General may make regulations, not inconsistent with this Act nor with a zoning plan, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act. Paragraph 66(2)(b) of the Act provides for the making of regulations giving effect to, and enforcing the observance of, zoning plans.

A zoning plan sets out the framework for planning and management for a section of the Great Barrier Reef Marine Park ("the Marine Park") and sets out the purposes for which that section may be used or entered.

Subsection 66(4) of the Act states that a regulation is taken not to be inconsistent with a zoning plan merely because it further regulates or prohibits an activity that is otherwise allowed or permitted by the zoning plan.

Subsection 32(1) of the Act provides that as soon as practicable after an area has been declared to be part of the Marine Park, the Authority shall prepare a zoning plan in respect of that area. The Gumoo Woojabuddee Section of the Marine Park was declared to be a part of the Marine Park on 14 January 1998 by a proclamation published in the *Gazette* on that date.

The Gumoo Woojabuddee Section Zoning Plan ("the zoning plan") was tabled in both houses of Parliament on 16 September 2002. The purpose of the Regulations is to give effect to the zoning plan.

The Regulations:

- Prescribe the matters which are to be addressed when applying for a relevant permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park.
- Outline the matters that the Great Barrier Reef Marine Park Authority ("the Authority") must take into account when considering an application for a relevant permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park.
- Declare the activities that are prohibited in the Habitat Protection Zone, Conservation Park Zone and the National Park Zone of the Gumoo Woojabuddee Section of the Marine Park.
- Provide for the designation of areas of the Gumoo Woojabuddee Section of the Marine Park as Seasonal Closure Areas, Dugong Management Areas, Defence Areas, or a Shipping Areas.

- Provide for the declaration of the application of Special Management Provisions for designated areas.

Details of the Regulations are set out in the Attachment.

A Regulation Impact Statement was prepared for the Gumoo Woojabuddee Section Zoning Plan. Copies of that Regulation Impact Statement can be obtained by contacting the Great Barrier Reef Marine Park Authority on (07) 4750 0700.

The Regulations commence on gazettal.

Attachment

Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 7)

The proposed Regulations are as follows:

Regulation 1 provides that the name of the regulations is the *Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 7)*.

Regulation 2 provides that the regulations commence on gazettal.

Regulation 3 provides that Schedule 1 amends the *Great Barrier Reef Marine Park Regulations 1983*.

Schedule 1 - Amendments

Amendment 1 inserts a new definition of the Gumoo Woojabuddee Section into subregulation 4(1) of the *Great Barrier Reef Marine Park Regulations 1983* ("the principal Regulations").

Amendment 2 inserts a reference to new regulation 32G into subregulation 6(1) of the principal Regulations. The effect of this amendment is to provide that a permission granted under new regulation 32G in respect of the Gumoo Woojabuddee Section of the Marine Park is a permission to which section 38B of the Act applies. Section 38B of the Act makes it an offence for a person to intentionally or negligently use or enter a zone without a permission where the zoning plan provides that a permission is required to use or enter the zone.

Amendment 3 inserts a reference to new regulation 32G into subregulation 6(3) of the principal Regulations. The effect of this amendment is to provide that a permission granted under new regulation 32G in respect of the Gumoo Woojabuddee Section of the Marine Park is a permission to which paragraphs 38CB(1)(c), 38MA(1)(d) and 38MA(3)(c) of the Act apply.

Amendment 4 inserts the heading "Part 4A Zones (Gumoo Woojabuddee Section) after Part 4 of the principal Regulations.

Amendment 4 also inserts new regulations 32B - 32N (inclusive) into the principal Regulations as follows:

New Regulation 32B (Interpretation)

New Regulation 32B inserts definitions of "zone" and "zoning plan" for the purposes of Part 4A. It also inserts a definition of "designated area" for the purposes of the zoning plan. Pursuant to Part 3 of the zoning plan, there are four different types of designated areas: Seasonal Closure Areas, Dugong Management Areas, Defence Areas and Shipping Areas.

New Regulation 32C (Zoning plan definitions - collecting, fishing, netting and crabbing)

New Regulation 32C defines key terms used in the zoning plan such as bait netting, collecting, commercial netting, crabbing, fishing, limited collecting, limited crabbing and limited line fishing.

New Regulation 32D (Application for a relevant permission)

New subregulation 32D(1) provides that an application to the Authority for a relevant permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park must be in writing.

However, where an application requires urgent consideration, the subregulation allows the Authority to accept an oral application.

New subregulation 32D(2) outlines the information that an application to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park must contain. These requirements are consistent with those for the other sections of the Marine Park.

New subregulation 32D(3) provides that an application is not invalid only because it does not include all of the information required by subregulation (2).

New subregulation 32D(4) lists all the matters, in addition to those listed in subregulation 32D(2), that an application for a relevant permission for the purposes of research (including manipulative research) must contain. These requirements are consistent with those for the other sections of the Marine Park.

New subregulation 32D(5) lists all the matters that the Authority must have regard to in considering an application for a relevant permission. This amendment is consistent with the requirements for the other sections of the Marine Park.

New subregulation 32D(6) lists all the matters that the Authority must have regard to (in addition to those matters listed in subregulation 32D(5)) when considering an application to use or enter a zone or designated area for the purpose of traditional fishing and collecting or traditional hunting. This amendment is consistent with the requirements for the other sections of the Marine Park in respect of matters that the Authority must take into account when assessing an application for a relevant permission for traditional fishing and traditional hunting and gathering.

New Regulation 32E (Advertising of application)

New subregulation (1) allows the Authority, by written notice, to require an applicant for a relevant permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park to give public notice by written advertisement of the application where the Authority considers that the granting of such permission may restrict the reasonable use by the public of a part of the Marine Park.

Such public notice must set out the information relating to the application that the Authority reasonably requires, invite interested persons to provide comments in writing within the period specified by the Authority, and specify an address to send such comments.

New subregulation (2) requires that the Authority have regard to any written comments received in response to the public notice given under subregulation (1) before making a decision in respect of the application for a relevant permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park.

New subregulation (3) outlines what constitutes a written advertisement for the purposes of subregulation (1).

New Regulation 32F (Additional information in relation to an application)

New subregulation (1) allows the Authority, by notice in writing, to ask an applicant for a relevant permission to provide any additional information that is specified in the notice, being information that is necessary for the proper consideration of the application by the Authority.

New subregulation (2) clarifies that an application is taken to have lapsed if such information as requested under subsection (1) is not provided to the Authority within 60 days of the applicant receiving written notification of the request or such further time as the Authority allows.

New Regulation 32G (Grant or refusal of relevant permission)

New subregulation (1) provides that the Authority may either grant a permission in writing or by notice in writing refuse to grant a permission in writing in circumstances where a person has applied for a relevant permission and has complied with any requirement or request duly made by the Authority.

New subregulation (2) clarifies that a relevant permission may be granted subject to conditions specified in the permission.

New subregulation (3) provides that the Authority may vary a condition of a permission and outlines the circumstances in which such a variation may take place.

New subregulation (4) clarifies that a permission remains in force for the period specified in the permission unless it is sooner surrendered by the permission holder or revoked by the Authority.

New Regulation 32H (Prohibited activities in the Gumoo Woojabuddee Section)

New subregulation (1) lists the activities that are prohibited in the Habitat Protection Zone for the purposes of paragraph 5.4(m) of the zoning plan. .

New subregulation (2) lists the activities that are prohibited in the Conservation Park Zone for the purposes of paragraph 6.4(k) of the zoning plan.

New subregulation (3) lists the activities that are prohibited in the National Park Zone for the purposes of paragraph 8.4(m) of the zoning plan.

New Regulation 32I (Authority may designate areas)

New regulation 32I allows the Authority to designate part or parts of a zone, or of more than 1 zone, as either a Seasonal Closure Area, a Dugong Management Area, a Defence Area, or a Shipping Area for the purposes of clauses 9.1,10.1(b),11.1(b) and 12.1 (respectively) of the zoning plan. These designations are in addition to those areas. that have been declared as designated areas in the zoning plan.

New Regulation 32J (Authority may declare that special management provisions apply)

New subregulation (1) provides that the Authority may declare that the Special Management Provisions set out in clause 9.4 of the zoning plan apply to a Seasonal Closure Area for a specified period of up to 7 months in any 12 month period.

New subregulation (2) provides that the Authority may declare that the Special Management Provisions set out in new regulation 32K apply to a Dugong Management Area.

New subregulation (3) provides that the Authority may declare that the Special Management Provisions set out in clause 12.4 of the zoning plan apply to a Shipping Area. The Special Management Provisions apply to that area for the period specified in the notice published by the Authority in accordance with new regulation 32M.

New Regulation 32K (Special management provisions for Dugong Management Areas)

New subregulation (1) sets out the Special Management Provisions for the Dugong Management Area for the purposes of clause 10.4 of the zoning plan.

New subregulation (2) defines key terms used in subregulation (1).

New Regulation 32L (Proposed designation or declaration)

New subregulation (1) requires that, before making a designation under regulation 321, the Authority must, by written advertisement, specify the area within which it proposes to create the designated area, specify the kind of designated area that the area is proposed to be designated as, and invite interested persons to make representations in writing regarding the designation of the area.

New subregulation (2) requires that, before making a declaration under regulation 32J, the Authority must, by written advertisement, specify the area for which it proposes to declare Special Management Provisions, state the Special Management Provisions that it proposes to declare for the area, and invite interested persons to make representations in writing regarding the declaration of the proposed Special Management Provisions.

Further, if the area is, or is proposed to be designated as, a Seasonal Closure Area or a Shipping Area, the Authority must also include in the written advertisement the period or periods for which it proposes that the Special Management Provisions will apply.

New subregulation (3) provides that a person may, not later than the date specified in the notice referred to in subregulations (1) or (2), make written representations to the Authority in relation to the designation of an area mentioned in the notice or the declaration of the proposed Special Management Provisions.

New subregulation (4) outlines what constitutes a written advertisement for the purposes of subregulations (1) and (2).

New Regulation 32M (Making a designation or declaration)

New subregulation (1) provides that the Authority must have regard to any representations made in accordance with subregulation 32L(3) when making a designation under regulation 321 or a declaration under regulation 32J.

New subregulation (2) provides that a designation under regulation 321 or a declaration under regulation 32J must be in accordance with the proposal specified under regulation 32L.

New subregulation (3) states that the Authority must publish a designation under regulation 321 or a declaration under regulation 32J, and outlines the requirements for such publication.

New subregulation (4) outlines when the designation under regulation 321 or the declaration under regulation 32J, takes effect.

New Regulation 32N (Extension and revocation)

New subregulation (1) allows the Authority at any time to revoke a designation under regulation 321 or a declaration under regulation 32J by publishing a notice in the *Gazette*.

New subregulation (2) allows the Authority to extend the period for which a declaration under regulation 32J applies by publishing a notice in the *Gazette* before the end of the period specified in the previous declaration.

New subregulation (3) clarifies that the Authority must not extend the period for which Special Management Provisions are to apply to a Seasonal Closure Area if the extended period would exceed 7 months in any 12 month period.

Amendment 5 inserts a reference to new subregulation 32F(2) into subregulation 51(1) of the principal Regulations. The effect of this amendment is to deem that a permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park remains in force where the period of the permission has expired if the permittee lodges with the Authority (before the end of that period) an application for a further permission.

Amendment 6 inserts a reference to new subregulation 32G(1) into subregulation 51(3) of the principal Regulations. The effect of this amendment is to include a permission granted to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park as a prescribed permission for the purposes of regulation 51 of the principal Regulations.

Amendment 7 inserts a new paragraph 52(6)(ba) into subregulation 52(6) of the principal Regulations. The effect of this amendment is that if a permission to conduct an activity in the Gumoo Woojabuddee Section of the Marine Park is transferred, then the grant of the transferred permission will take effect on the day the transfer is granted.

Amendment 8 inserts a reference to new subregulation 32F(2) into subregulation 104(2) of the principal Regulations.

Amendment 9 substitutes the heading to Schedule 1 of the principal Regulations so that the heading includes references to the definitions of collecting and limited collecting for the zoning plan.

Amendment 10 substitutes the heading to Schedule 3 of the principal Regulations so that the heading includes references to the definition of limited collecting for the zoning plan.

Amendment 11 substitutes the heading to Schedule 4 of the principal Regulations so that the heading includes references to the definition of fishing for the zoning plan.