

EXPLANATORY STATEMENT

Select Legislative Instrument 2018 No. _____

Issued by the Authority of the Minister for the Environment and Energy

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018

The *Great Barrier Reef Marine Park Act 1975* (the Act) establishes the Great Barrier Reef Marine Park Authority (the Authority) and makes provision for and in relation to the establishment, control, care and development of a Marine Park in the Great Barrier Reef Region.

Subsection 66(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act or with a zoning plan, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

The *Great Barrier Reef Marine Park Regulations 1983* (the principal Regulations) prescribe, *inter alia*, the regulation or prohibition of the taking of animals or plants into, or out of, the Marine Park.

The *Great Barrier Reef Zoning Plan 2003* (the Zoning Plan) is the primary planning instrument for the conservation and management of the Marine Park. The Marine Park is managed as a multiple use area. This means that, while enhancing the conservation of the Marine Park, the Zoning Plan also provides for a range of recreational, commercial and research opportunities, and for the continuation of traditional activities.

The purpose of the *Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018* (the amendment Regulations) is to amend the principal Regulations to:

- allow for the continued take of scalloped hammerhead shark (*Sphyrna lewini*) in accordance with Queensland fisheries legislation; and
- correct a typographical error at Regulation 205A(1) to replace Part 2 with Part 2A.

On 1 February 2018 the Minister for the Environment and Energy amended the list of threatened species referred to in section 178 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to include scalloped hammerhead shark in the Conservation Dependent category.

A listing of Conservation Dependent under the EPBC Act allows for the continued commercial harvest of the species in accordance with EPBC Act requirements. However, the principal Regulations do not distinguish between categories of threatened species and as such all threatened species, including those listed as Conservation Dependent are protected species in the Marine Park. Thus, the listing of scalloped hammerhead shark in the Conservation Dependent category would prohibit the take of the species within the Marine Park under the principal Regulations, which is contrary to the intent of the Conservation Dependent listing.

Paragraph 5.3(c) of the Zoning Plan provides that the take of protected species may be for a purpose prescribed by the principal Regulations. Regulation 69 of the principal Regulations provides for those prescribed purposes.

The amendment Regulations amend regulation 69 to provide that for the purposes of paragraph 5.3(c) of the Zoning Plan the following purpose is prescribed, that is, the taking of an animal of the species *Sphyrna lewini* is prescribed and that the take must be in accordance with Queensland fisheries legislation.

The effect of the amendment allows for the continued take of scalloped hammerhead shark in accordance with Queensland fisheries legislation and maintains consistency across environmental legislation.

The Threatened Species Scientific Committee, an independent committee of conservation scientists that provides the Minister for the Environment and Energy with advice on matters relating to listing, conservation and recovery of threatened species and ecological communities, and listing and abatement of key threatening processes, undertook public and expert consultation on a draft assessment in June/July 2014.

The Authority undertook additional consultation with the Department of Environment and Energy regarding their views about maintaining consistency in environmental legislation and aligning the species protection mechanisms within the Marine Park. The Authority also participated in a stakeholder working group consisting of Queensland State Government, Marine Park users and local industry. The Amendment Regulations do not affect the existing use of the Marine Park and remedy the unintended consequence of a Conservation Dependent listing, as such it was determined that no additional consultation was necessary.

Details of the proposed Regulations are set out in Attachment A.

The Office of Best Practice Regulation advised that the amendment Regulations were likely to have a minor regulatory impact on business, community organisations or individuals and as such a Regulation Impact Statement was not required.

The amendment Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The amendment Regulations commenced the day after it was registered on the Federal Register of Legislation.

Authority: Section 66(1) of the *Great Barrier Reef Marine Park Act 1975*

Details of the proposed *Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018*

Section 1 - Name of Regulations

This regulation provides that the title of the Regulations is the *Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018*.

Section 2 - Commencement

This regulation provides for the Regulations to commence the day after the instrument is registered.

Section 3 - Authority

This regulation provides that the *Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018* is made under the *Great Barrier Reef Marine Park Act 1975*.

Section 4 - Schedules

This regulation provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Item [1] – regulation 69

Existing regulation 69 of the principal Regulations prescribes, for the purposes of paragraph 5.3(c) of the *Great Barrier Reef Marine Park Zoning Plan 2003*, that a zone may be used or entered for purposes of taking *Solegnathus hardwickii* or *S. dunckeri*, being species of pipefish, in accordance with Queensland fisheries legislation. This item amends regulation 69 to also allow a zone to be used or entered for the purpose of taking *Sphyrna lewini* (scalloped hammerhead shark) in accordance with Queensland fisheries legislation.

Item [2] - regulation 69 (note)

The note following regulation 69 provides that the 2 species mentioned in existing regulation 69 are pipefish, of the family Syngnathidae, and that all species of that family are otherwise protected. As a consequence of item 1 to prescribe for a third species, item 2 clarifies that only the first 2 listed species are pipefish, of the family Syngnathidae.

Item [3] – Subregulation 205A(1)

Existing subregulation 205A(1) sets out that the Authority may arrange for the use, under the control of the Authority, of computer programs for any purposes for which the Authority

is required or permitted to make a decision (however described), or give a notice, under Part 2 or Part 7 of the principal Regulations, being matters relating to the Zoning Plan and fees respectively. This item would correct a typographical error by substituting Part 2 for Part 2A, being matters relating to permissions.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Great Barrier Reef Marine Park Amendment (Hammerhead Shark) Regulations 2018

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of this Instrument is to amend the *Great Barrier Reef Marine Park Regulations 1983* to allow for the continued take of scalloped hammerhead shark (*Sphyrna lewini*) in the Marine Park. The amendment maintains existing rights of Marine Park users and stakeholders as well as ensuring consistency across environmental legislation.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.