



Queensland

Marine Parks (Declaration) Regulation 2006

Marine Parks Regulation 2006

Regulatory Impact Statement for SL 2006 Nos. 222, 223

made under the

Environmental Protection Act 1994

Fisheries Act 1994

Marine Parks Act 2004

Nature Conservation Act 1992

Place Names Act 1994

State Penalties Enforcement Act 1999

This regulatory impact statement applies for each of the 2 items of subordinate legislation mentioned above. Separate explanatory notes accompany the 2 items.

Introduction

This document sets out proposals for a new Marine Parks Regulation (“the new Regulation”).

Queensland subordinate legislation automatically expires and is required to be reviewed at 10 year intervals to ensure that outdated or unnecessary laws do not remain on the statute books. The *Marine Parks Regulation 1990* (“the current Regulation”) has been exempted from expiry until 31 August 2006 on the basis that the *Marine Parks Act 1982* was under review.

The scheduled expiry date for the current Regulation is set by the *Statutory Instruments Act 1992*, which states that subordinate legislation expires automatically after ten years, unless specifically exempted or extended. This ensures that regulations are regularly reviewed to:

- reduce the regulatory burden, without compromising law and order and essential economic, environmental, social and cultural objectives;
- ensure subordinate legislation is relevant to the economic, social and general well-being of the people of Queensland; and
- otherwise ensure subordinate legislation is of the highest standard.

The *Statutory Instruments Act 1992* also requires that if proposed subordinate legislation is likely to impose appreciable costs on the community or a part of the community, then, before the legislation is made, a regulatory impact statement (RIS) must be prepared about the legislation. Preparation of a RIS requires consideration of the policy intent of the proposed legislation and how best to achieve that intent. The RIS forms the basis for public comment on the proposed legislation.

Under State/Commonwealth agreements on National Competition Policy, a Competition Principles Agreement requires proposals for new legislation that might restrict competition to be subject to a Public Benefit Test (PBT). Legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs, and the benefits can only be achieved by restricting competition. The matters contained in this review that have such implications are discussed further below.

Comments and responses are invited on the proposals addressed under this Regulatory Impact Statement.

The closing date for submissions is 5.00pm on 3 March 2006.

For further information about the Regulatory Impact Statement telephone 07 3227 6124, fax 07 3225 8029 or email: mpr.review@epa.qld.gov.au.

This document can be accessed on the internet at www.epa.qld.gov.au.

Public access to submissions

Submissions may be accessible under the *Freedom of Information Act 1992*. Please identify any submission, or part of a submission, that needs to be treated as “commercial-in-confidence”. Similarly, if a submission contains details about a person’s personal affairs (his or her experiences relevant to a matter covered in this document), and it is in the public interest to protect the person’s privacy, the “personal” information in that submission would not be accessible under the *Freedom of Information Act 1992*.

Abbreviations

The following abbreviations are used in this document:

AAT	Administrative Appeals Tribunal
EPA	Environmental Protection Agency
GBRMPA	Great Barrier Reef Marine Park Authority
NCP	National Competition Policy
PBT	Public Benefit Test
RIS	Regulatory Impact Statement
TIPA	Tourism in Protected Areas Initiative

Background

The *Marine Parks Act 1982* (“the Act”) provides for the declaration, planning and management of marine parks in Queensland. The Act was introduced as the result of a State–Commonwealth commitment under the Emerald Agreement (part of the 1979 Offshore Constitutional Settlement) to bring State legislation on marine parks into line with the *Great Barrier Reef Marine Park Act 1975* (Cwlth), to allow for the declaration of consistent State and Commonwealth marine parks in the Great Barrier Reef.

Queensland is the only Australian State to have a Commonwealth marine park directly adjoining its coast. All Commonwealth marine parks except the Great Barrier Reef Marine Park are restricted (by Offshore Constitutional Settlement arrangements between the States and Commonwealth) to waters three nautical miles (about 5km) or further offshore.

An arrangement has been in place since 1982 to declare overlapping State and Commonwealth marine parks in the Great Barrier Reef.

More than 85% of the total area of Queensland marine parks lies within or adjacent to the Great Barrier Reef Region. The complementary legal, administrative and management arrangements implemented through the marine park regimes have been instrumental in allowing users of the reef to conduct their business with certainty and in a clear and consistent legal framework, despite significant jurisdictional uncertainties.

Queensland marine parks have also been established at Hervey Bay, Woongarra and Moreton Bay. The use of consistent legislation, zoning arrangements and terminology for all Queensland marine parks, both inside the Great Barrier Reef Region and elsewhere, provides a consistent, efficient and user friendly approach to the management of Queensland's marine environment.

A major review of the Act was completed on 12 October 2004 when the new *Marine Parks Act 2004* ("the new Act") received Royal Assent. Some provisions commenced on assent. Most provisions of the new Act will come into effect around the same time as the new Regulation.

Many aspects of the current Regulation have been incorporated into the new Act (see Table 2.1). In addition, some provisions in the current Regulation were reviewed and remade during the preparation of a zoning plan for the Great Barrier Reef Coast Marine Park in November 2005 (see Table 2.2).

Authorising law

The new Regulation is to be made under the provisions of the *Marine Parks Act 2004*, in particular, sections 150 (Regulation-making power) and 151 (Relationship between regulation and zoning plan).

Section 150 of the new Act provides that regulations may be made by the Governor in Council for the conservation of the marine environment. For example, regulations may be made about any of the following:

- the classification and naming of areas within a marine park;
- the entry to, or use of, a marine park;
- implementing and enforcing compliance with, management plans or codes of practice;
- the authorities required under the Act;
- the review of, and appeals against administrative decisions made under the Act;

- the records, returns and other documents required to be kept by the holder of any authority; and
- the fees payable under the Act.

A regulation may prescribe a penalty of not more than 165 penalty units. One penalty unit is currently \$75, making the maximum penalty available under a regulation \$12,375, compared with penalties of up to \$225,000 available for some serious offences under the new Act.

Section 151 of the Act provides that if a regulation is inconsistent with a zoning plan, the zoning plan prevails to the extent of the inconsistency.

However, a regulation is not inconsistent with a zoning plan merely because the regulation:

- (a) further regulates or prohibits an activity authorised under the plan; or
- (b) otherwise increases the level of protection for the marine environment provided by the plan.

Policy objectives

The new Regulation is intended to replace the current Regulation before it expires on 31 August 2006. The current Regulation is more than 10 years old and needs to be remade to comply with fundamental legislative principles and best practice legislative standards.

The primary objective of making the new Regulation is to provide for effective management of marine parks to achieve the objects of the new Act; namely, the conservation of the marine environment.

Consistency with the authorising law

The proposed new Regulation will bring the regulations into line with the provisions of the new Act. Until this is done, the current Regulation and the new Act are inconsistent. The review of the current Regulation is consequently essential to achieve consistency between the Regulation and the authorising law.

Consistency with other legislation

The new Act and new Regulation will be the central legislation providing for marine conservation in Queensland. The legislation has close

relationships with the *Great Barrier Reef Marine Park Act 1975* (Cwlth) and the *Nature Conservation Act 1992*.

In addition, because Queensland marine parks are based on the concept of achieving conservation through working with all relevant users of the marine environment to ensure that activities are managed sustainably, the legislation has potential interfaces with a broader framework of State and Commonwealth law which includes the following:

- *Coastal Protection and Management Act 1995*;
- *Environmental Protection Act 1994*;
- *Recreation Areas Management Act 1988*;
- *Native Title Act 1993* (Cwlth);
- *Integrated Planning Act 1997*;
- *State Development and Public Works Organisation Act 1971*;
- *Fisheries Act 1994*;
- *Transport Infrastructure Act 1994*;
- *Transport Operations (Marine Pollution) Act 1995*; and
- *Transport Operations (Marine Safety) Act 1994*.

The proposals for the new Regulation are consistent with other legislation. In particular, they are consistent with Commonwealth regulations for management of the Great Barrier Reef Marine Park, and give effect to section 5(3) of the new Act, which recognises that the Commonwealth and the State have agreed that State legislation is to maintain, as far as practical, legislation in line with the Commonwealth.

National Competition Policy

The guiding principle of the Competition Principles Agreement, under National Competition Policy (NCP), is that legislation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

The only provision in the current Regulation which directly restricts competition is section 10A. This provision was introduced in 1997, and

limits the number of commercial whale watching permits that can be granted in Hervey Bay to 20, and in Moreton Bay to 3. It also prohibits the further grant of permits for dolphin feeding in marine parks.

The policy basis for this provision is set out in a cetacean conservation plan entitled ‘Conservation and management of whales and dolphins in Queensland 1997–2001, Department of Environment 1997’. These provisions are required for natural resource management reasons and are therefore not dealt with in detail in analysis of NCP issues. In addition, the whale and dolphin conservation plan will be due for review prior to 2007, and any changes to the provisions on commercial whale watching and dolphin feeding would be best made in that context. That is, there are no changes to those provisions recommended at this time.

The main NCP issue, therefore, relates to the section of this document dealing with provisions for negotiation of commercial activity agreements for particular visitor sites in marine parks and linkages to adjacent national parks. Similar proposals were the subject of public consultation during the review of regulations under the *Nature Conservation Act 1992* and were detailed in that RIS/Draft PBT (released for public comment in November 2004). Any NCP matters will therefore be addressed through the PBT process associated with that review, and will specifically include analysis of the proposal with regard to marine parks.

Consultation with the tourism industry on proposed tourism management arrangements has occurred, and more extensive discussions will occur through this RIS process.

Marine park permit assessment fees

Existing legislative environment

Existing State marine park permit application fees mirror charges imposed under the *Great Barrier Reef Marine Park Regulations 1983*. However, the Commonwealth fees apply to the assessment of all applications for permissions of a commercial nature while the Queensland fee schedule is currently framed so as to apply only to tourism activities.

The current fee schedule applies to all State marine parks, both within the Great Barrier Reef and outside the Great Barrier Reef.

Both the Commonwealth and State legislation allow fees to be reduced or waived where only minimal assessment is necessary.

Discussion

In the Great Barrier Reef, consistent charging regimes are necessary for the proper operation of joint permit arrangements, to overcome jurisdictional uncertainties, and to clarify the legal situation in relation to the current collection of only a single fee in situations where an activity requires both State and Commonwealth permissions.

Hence, permit assessment fees need to be brought into line with the fees currently charged under the Commonwealth Great Barrier Reef Marine Park Regulations in situations where joint State/Commonwealth permits are normally issued.

In some Great Barrier Reef situations where joint permits are not applicable (e.g. for an activity taking place entirely within a river, creek or estuary), it is proposed to discontinue the charging of permit assessment fees for the reasons given in the following paragraph.

Outside the Great Barrier Reef, whilst it is desirable in some respects to a maintain consistent State-wide laws and charging regimes, application of the current Commonwealth permit assessment fees would in fact represent a new charge for most applicants. The current fee schedule applying only to tourism is inequitable. It is proposed to discontinue the charging of permit assessment fees.

Proposed amendments

Great Barrier Reef Coast Marine Park

Within the Great Barrier Reef, in those situations where joint State/Commonwealth permits are generally issued, it is proposed to bring State marine park fees into line with the fees currently applied to the assessment of permissions under the *Great Barrier Reef Marine Park Regulations 1983* (see Table 1 below).

Allowing for automatic indexation in accordance with the consumer price index as required under section 5A, the proposed fees are identical to the level of fees already charged under the current Regulation. However, the fee schedule under the State legislation applies only to 'permission to carry out tourism activity'. Under the new Regulation, the fees would be applied to the assessment of all activities of a commercial nature which are subject

to permits, along the lines of sections 127 and 128 of the Commonwealth regulation.

Within and adjacent to the Great Barrier Reef Marine Park, State and Commonwealth permits are assessed and issued jointly by the Environmental Protection Agency and the Great Barrier Reef Marine Park Authority. This is a policy arrangement which has been in place since the mid 1980s to assist in overcoming jurisdictional uncertainties, and also to take account of the fact that one activity frequently takes place both in State marine park and Commonwealth marine park.

Officers of either or both agencies may undertake permit assessment. Permit assessment fees are identical under the State and Commonwealth legislation, but are collected only once even if a development or activity is situated in areas of both State and Commonwealth jurisdiction.

The highest fee level of \$81,670 is intended to apply to major developments in the Great Barrier Reef which involve large commitments of time by officers of the Great Barrier Reef Marine Park Authority. The figure is based on actual costs incurred in the past by the Authority in assessing and conditioning large and complex development projects for marinas and floating hotels.

The EPA in permit assessment has applied no fees of this magnitude in practice. It is necessary for this fee to be contained in State legislation only for complementarity with the Commonwealth legislation in joint permit situations (particularly where jurisdiction is uncertain).

Given that impact assessment processes are most commonly undertaken through the Integrated Planning Act or the State Development and Public Works Organisation Act on a whole of Government basis, it is likely that the fee under the marine park legislation would not actually be applied in most situations.

Table 1: Proposed fees applying to the assessment of applications for permission (as indexed to 1 January 2004).

Activity	Fee—initial permission (\$)	Fee—continuation of permission (\$)
Activity that requires use of an aircraft or vessel having a maximum passenger capacity of:		
(a) fewer than 25 passengers	520	520

Activity	Fee—initial permission (\$)	Fee—continuation of permission (\$)
(b) 25 to 50 passengers	750	600
(c) 51 to 100 passengers	1 360	830
(d) 101 to 151 passengers	2 260	1 200
(e) more than 150 passengers	3 780	1 510
Activity that requires the use of a facility or structure in the Marine Park	1 660	1 660
Activity that requires a public notice to be given	6 040	2 260
Activity about which an environmental impact statement is to be prepared	81 670	81 670
Continuation of an activity about which an environmental impact statement was prepared, if no other such statement is to be prepared about the continuation		3 780
Activity not covered by items above	520	520

Under the current Regulation it can be argued that, where an activity occurs both in State and Commonwealth marine parks, then both State and Commonwealth fees should be collected, resulting in a total payment by the applicant of double the amount shown in Table 1 (e.g. for a marina development which straddled the low water mark, or a tourism program which uses both inshore Queensland waters and offshore Commonwealth waters). This is not the way the legislation is applied in practice, and the assessment fee is only ever applied once, with fees being collected by the Great Barrier Reef Marine Park Authority under an administrative arrangement and divided between the Environmental Protection Agency and the Authority on a negotiated basis, according to the proportion of time expended by State or Commonwealth officers on permit assessment. The new Regulation will remove any legal uncertainties over this arrangement.

Consistent with powers under the existing Regulation, the Chief Executive will be allowed to reduce or waive fees where:

- only minimal assessment is necessary; or

- the assessment is coordinated with assessments undertaken by the EPA under other legislation e.g. the *Coastal Protection and Management Act 1995*, *Environmental Protection Act 1994* or *Nature Conservation Act 1992*; or
- the assessment is coordinated with assessment undertaken by the Great Barrier Reef Marine Park Authority; or
- the assessment is coordinated with an assessment undertaken under another Act.

Moreton Bay, Hervey Bay and Woongarra Marine Parks, and GBR “internal waters”

In Moreton Bay, Hervey Bay and Woongarra marine parks, the current fee schedule applies charges identical to those shown in Table 1, but as previously discussed the fee schedule currently applies only to “permission to carry out tourism activity”. Unlike the Great Barrier Reef, where the permits issued relate mostly to tourism, the activities most commonly conducted in marine parks outside the Great Barrier Reef are not tourism related. Hence, permit assessment fees are rarely applied.

This situation is considered inequitable, and penalises tourism in comparison with other activities which may involve similar levels of assessment.

In addition, for many activities such as installation of structures, harvest fisheries, dredging and oyster culture, fees are charged under other Government legislation, and the imposition of marine park fees would need to involve a broader analysis of overall Government fees and charges. This is not considered to be warranted, as the number of marine park applications dealt with and the potential level of cost recovery involved is relatively minor, and probably would amount to less than \$20,000 revenue per annum.

There are 3 options:

1. Adopt uniform permit assessment fees for all marine parks State-wide. This would involve the imposition of new charges on commercial activities requiring permits in Moreton Bay and Hervey Bay, and may duplicate some other Government fees and charges. This option may need to be considered in the future if the level of resources devoted to permit assessment increases significantly, but is not considered to be justified at the present time.
2. Leave the status quo in place for marine parks outside the Great Barrier Reef, charging permit assessment fees for “tourism activity”

but not other activities of a commercial nature. This approach is clearly inequitable and is not supported.

3. Discontinue the charging of permit assessment fees for marine parks except where Great Barrier Reef joint permit arrangements apply. This approach does not result in the introduction of new charges or unfairly penalise tourism in comparison with other activities of a commercial nature. This proposal merely clarifies the existing situation for the charging of a single fee where integrated assessment under State and Commonwealth legislation occurs.

Option 3 is the preferred option.

It is consequently proposed in the new Regulation to discontinue the application of permit assessment fees to State marine parks outside the Great Barrier Reef. This will also be the situation in rivers, creeks and estuaries adjoining the Great Barrier Reef where joint permits are not involved.

Commercial activity agreements, and sustainable visitor capacity at particular sites

Current legislative environment

Nature conservation legislation currently provides for the use of either a permit or a negotiated commercial activity agreement to authorise commercial activities in national parks and other protected areas.

Tourism activities in State marine park are authorised through the grant of “tourist program permits” under zoning plans. There is no power to allow for competitive allocation processes through an expressions of interest process or to negotiate agreements for particular visitor sites in marine parks.

Discussion

Many popular tourism destinations exist within State marine parks. Often the attraction of a marine park tourism site is enhanced by or directly related to an adjacent protected area. For example, persons visiting national park islands would inevitably view an Island and the adjoining marine park beach as a single destination.

It is essential that adjoining national park and marine park areas be managed in an integrated manner. Tourists who access a marine park beach make use of adjacent national park walking tracks, toilets, shelter sheds, interpretive facilities and the like, and create a need for beach protection measures, management planning and site planning, including management of visitor numbers.

Commercial operators accessing such sites depend for the viability of their businesses upon access to both the marine park areas and the terrestrial national park areas. Bringing marine park permit arrangements into line with the management arrangements for commercial activities under the nature conservation legislation would enhance the management of tourism at such sites.

This would also be in the interests of tourism operators, who could simultaneously obtain the right to operate both in national parks and on the adjoining marine park beaches through the one integrated process, rather than through two disjunct processes.

Management fees are applied to commercial operations conducted on protected areas. These are set at \$1.25 per client for visits of less than 3 hours and \$2.45 per client for more than 3 hours. For tourism operators in the Great Barrier Reef Marine Park, all visitors participating in a commercial operation are required to pay an environmental management charge of \$4.50.

There are no management charges for State marine parks either inside the Great Barrier Reef or elsewhere, except for commercial whale watching operators in Hervey Bay and Moreton Bay who pay a fee of \$2.45 per passenger (\$1.25 for persons under 15 years).

It is considered undesirable to impose new management fees for State marine parks, however there is a need:

- to be able to combine assessments, approvals and negotiations for efficiency, and
- to allow for negotiation of agreements through an expressions of interest process at particular sites, or for certain activities (e.g. food vending).

As a matter of policy, commercial activity agreements will not generally be applied within areas of Commonwealth jurisdiction in the Great Barrier Reef. They will apply to State marine park beaches, bays and estuaries together with island national parks.

Proposed amendments

It is proposed to include a head of power in the regulation that would allow the Chief Executive to designate specific activities at sites which would be subject to management under a commercial activity agreement, rather than a tourist program permit, and for the terms of such agreement to include terms relating to agreed payments.

The Chief Executive will have the power to establish sustainable visitor capacity for such sites or activities. This will recognise the recreational, cultural, economic and environmental value of these sites and ensure that sustainable visitor capacity is allocated equitably amongst all stakeholder groups.

Provisions will be included to ensure that an agreement for a marine park can be integrated with a similar agreement for an adjacent protected area.

Terms and conditions of commercial activity agreements, including charging arrangements, would be negotiated. As the commercial value of business opportunities under commercial activity agreements will vary from location to location or activity to activity, it is neither possible nor desirable to schedule fees. While the fees will be subject to negotiation and agreement on a case-by-case basis, a conceptual framework is being developed that will guide negotiations with operators to ensure that fees are equitable.

Commercial activity agreements could be issued for periods of up to ten years, with provision for annual extensions. This would provide greater business certainty for operators. A major review and reassessment would occur at least every five years, with annual minor reviews.

Commercial activity agreements could be varied, suspended or terminated under specified circumstances, such as environmental degradation or emergent public health and safety issues.

Holders of commercial activity agreements would be permitted to transfer or sell all of their agreed capacity, provided that the new operator meets applicable “appropriate person” criteria.

Holders of commercial activity agreements would be permitted to subcontract their agreed capacity.

Enforcement provisions will be made to ensure that operators comply with agreement conditions.

At sites that become subject to commercial activity agreements, any existing commercial activity permits for the relevant activity will be phased

out through direct transfer to commercial activity agreements or by non-renewal on expiry.

As a commercial activity agreement will be a negotiated agreement, there will be no right of merit review, should this become an option in the future. However, the processes involved in considering expressions of interest or similar matters would remain subject to appeal under the *Judicial Review Act 1991*.

Assessment of options

Tourism management in protected areas, including the use of commercial activity agreements, has been the subject of extensive consultation with the tourism industry over the past few years through the “Tourism in Protected Areas” Initiative (TIPA) (see the latest TIPA Working Group Report 2004).

Similar proposals were also the subject of public consultation during the review of nature conservation legislation and were detailed in a RIS/Draft PBT released for public comment in November 2004.

The use of commercial activity agreements allows greater flexibility than a permit system, with opportunities for greater cooperation and less direct regulation, and the ability to cooperatively manage protected areas and marine parks. However, individual commercial activity agreements may be relatively time-consuming to negotiate. As well, there can be potential equity issues, for example if there is a mix of operators under permits and commercial activity agreements for the same activity at the same site. It is intended that, in the interests of transparency, commercial activity agreements will be publicly available. This will exclude, however, matters that are commercially sensitive.

While commercial activity agreements could apply in specific cases where this would benefit both operators and the State, standard permit arrangements will remain elsewhere.

The principles of the proposed new arrangements are:

- firstly, to identify the values of a site, determine the current and desired setting of the site, assess visitor impacts on environmental, social and facility conditions at the site, decide the acceptability of the current level of visitor impacts for the desired management conditions then set a sustainable visitor capacity related directly to those values and the setting. Available capacity will then be allocated equitably between all stakeholder groups;

- secondly, to allow the available capacity to be offered to commercial operators through transfer, application, or expressions of interest processes;
- thirdly, to allow the allocated access rights to be transferred and traded, providing greater flexibility in the market place;
- fourthly, to provide greater security for operators through 10-year agreements and a single agreement for marine parks and protected areas, rather than 2 separate agreements.

Consistent with the management of national parks, the following sites would be suitable for management under commercial activity agreements:

- high demand sites (including sites with expected high demand);
- situations where there is a limited capacity or limited number of available commercial opportunities for natural resource management or site management reasons;
- sites that are of international, national or state importance (e.g. World Heritage areas);
- sites that are immediately adjacent to premium national park areas;
- sites where the maximum number of permits issued or the number persons that may visit such sites needs to be established because of some limiting factor (e.g. carrying capacity of visitor infrastructure or the physical characteristics of the site or points of access); or
- sites that are overused and showing signs of related social, environmental, cultural or economic impacts.

The main options are analysed below.

Allow for commercial activity agreements to be used as an option in place of tourist program permits at particular sites

There are 2 options:

1. Do not provide for commercial activity agreements as an option. Continue to approve all tourism in marine park solely under tourism program permits on a first come first served basis, with fixed fees, and no ability for industry to transfer or trade in an allocated site capacity; or
2. Allow for commercial activity agreements to be entered into and negotiated through transfer, application, or expression of interest

processes for particular visitor sites in marine parks. Allow persons with an operating capacity under an agreement to transfer or trade that allocation. Existing permit arrangements will be retained for all other sites.

Option one reflects the existing system for allocating tourism operators. In situations where there is abundant supply, the first come first served approach to the issue of permits is fair and competitive. This system rewards innovation in the sense that there is scope for both new operators with new ideas to enter the market and existing pioneer operators to innovate and grow their business (TIPA Working Group, March 2004). In addition, this system recognises existing operators with good track records.

However, the allocation of permits on a first come first served basis and reissue of such permits to existing holders is inequitable in situations where the demand for tourism access exceeds supply, or the site cannot cater for that demand. In these situations, there is no scope for new entrants.

Option two has advantages in high demand situations, and the use of commercial activity agreements allows greater flexibility than a permit system, with opportunities for greater cooperation and less direct regulation. It will enable commercial operators to trade capacity, thus enabling potential entrants an avenue to enter the market. It will also enable the allocation of new capacity that becomes available at new sites on a competitive basis through expressions of interest.

Option two will allow the Chief Executive to negotiate financial contributions from tourism operators during the transfer, application, or expression of interest processes. This will ensure that some of the site's market value is invested for park management purposes. Longer terms and the higher levels of market security and commercial flexibility provided will offset the payments made by those operators. Similarly the system aims to reduce the impact on individual operators by allowing financial contributions to be negotiated with due regard to the commercial and market realities of conducting a tourism operation.

Option two was developed in conjunction with, and has the support of, the tourism industry.

The current proposal is for the Chief Executive to have a discretion to apply both models. The extra administrative effort involved in assessing a sustainable visitor capacity for a site, preparing expressions of interest, assessing applications, negotiating agreements and reviewing commercial arrangements every 5 years mean that for low use sites the simple permit model is likely to be retained.

The new Marine Parks Regulation will not follow the model set in the Great Barrier Reef Marine Park Regulation and nature conservation legislation of applying a fixed passenger fee for all tourism operations. Instead, it will apply negotiated arrangements at particular sites in substitution for any similar charges currently imposed (such as the commercial activity fees under the nature conservation legislation or commercial whale watching fees under the Marine Parks Regulation).

The much higher level of security and commercial flexibility provided would offset the increased payments made by those operators who enter into agreements with the EPA.

Determination of the sustainable visitor capacity of sites

The level of capacity allocated to operators will relate to the sustainable visitor capacity of a site. This is the maximum level of use an area can sustain without unacceptable impacts or change occurring to the environmental, social, cultural and economic values or desired setting of a site. Sustainable visitor capacity can be expressed as the maximum daily capacity or the maximum number of people or vessels present at one time (TIPA Working Group, March 2004). A site's sustainable visitor capacity may need to be divided between a number of different interest groups (e.g. including commercial visitors, independent visitors and indigenous people or between overnight and day use visitors). The process developed to determine the sustainable visitor capacity of a site under the nature conservation legislation will apply to marine parks. This process is scientifically based, transparent and collaborative.

There are 3 options:

1. Continue to process tourism program permits without imposing collaboratively determined or planned site restrictions. This is the current system used for most tourism activities in most areas of marine parks. It works at sites where the level of use is well within the capacity of the site. However, once a site approached or exceeds its carrying capacity this model has problems. The total approved capacity for popular sites may be above the carrying capacity, and lead to sites becoming degraded as numbers grow over time, and for conflicts of use to emerge.
2. Establish site capacity through a management plan. This approach has been used at some sites in marine parks (e.g. Green Island near Cairns where numbers are capped through management plans; commercial whale watching in Hervey Bay and Moreton Bay where numbers of

operators are capped through regulations). It is, however, an impractical model to apply over a large number of sites, involves major delays, and is often simply impossible owing to higher priorities for EPA planning staff and resources.

3. Establish sustainable visitor capacity for a site in conjunction with a local reference panel comprising key stakeholders with an understanding of local conditions (e.g. indigenous, tourism, recreation, conservation and other representatives). Sustainable visitor capacity will often be based on natural resource management grounds, but other factors such as amenity and use conflicts will equally be considered.

All three options will continue to be used in appropriate situations. Option 3 will apply for all commercial activity agreements.

Integration of approvals for marine park and national park into a single integrated exercise

There are 2 options:

1. Maintain the present situation where marine park tourist program permits are not integrated with commercial activity agreements for adjoining national parks. This option avoids the need for legislative amendment. It also would leave the current joint permit arrangements for State and Commonwealth marine park permits in the Great Barrier Reef unchanged.
2. Allow for the integration of marine park tourist program permits and commercial activity agreements for adjoining national park and other protected areas. This option offers efficiencies for tourism operators and for Government in reducing red tape. It may, however, be impractical to maintain joint State/Commonwealth marine park permits for the sites where this model is applied. This would not affect any tourism operators who only use marine parks, and do not make use of island national parks, or operators operating to sites where the commercial activity agreement model is not applied. Such operators would continue to operate under the current arrangement involving joint State/Commonwealth marine park permits.

Summary of options

Overall, the proposals have significant benefits for the tourism industry and for the more effective conservation and management of particular high use tourism and recreation sites.

They increase competition and allow for market processes to be used in the allocation of a majority of commercial opportunities.

The alternative of not allowing for the option of commercial activity agreements in marine parks and not integrating marine park and national park agreements is not considered to be in the public interest, either from a national competition policy perspective, or from a perspective of conservation management or administrative efficiency.

Standardisation of zone names and objectives

Existing legislative environment

A range of zone names has been applied under various marine park zoning plans in Queensland since 1982.

Since 1991 when the Nature Conservation Act was formulated, it has been the policy intent of the Environmental Protection Agency that the terms “national park” and “conservation park” should be applied in a consistent manner under both the Nature Conservation Act and the Marine Parks Act to identify those areas on land and in water which comprise the core Queensland conservation estate. These terms have been drafted into the Nature Conservation Act as categories of protected areas. No similar provisions have yet been included in marine park legislation.

Section 5(2) of the Act requires that the objects of the Act be achieved by a strategy that involves, amongst other things, the establishment of highly protected areas within marine parks. Under the Schedule of the new Act, a “highly protected area” means a preservation zone, national park zone, conservation park zone or another zone, designated area or other area that is declared under a regulation or zoning plan to be a highly protected area. Under the new Act, before such areas can be removed from the marine park, Parliament must make a resolution allowing the areas to be revoked (see sections 9 and 19 of the new Act).

Section 150(2) of the new Act allows a regulation to be made about the classification and naming of areas within marine parks.

Discussion

Standard zone names and objectives

Marine park zoning plans have evolved over the past 20 years. A high degree of consistency has now been achieved in zone names and zone objectives both within State marine park zoning plans, between State and Commonwealth plans, and between terrestrial protected areas under the Nature Conservation Act and the corresponding zoning in marine parks.

Two exceptions to the use of a consistent and standardised set of zone names remain.

Firstly, in Moreton Bay it was not possible at the time of framing the zoning plan to use zone names consistent with other marine parks owing to a legal technicality inadvertently created by a provision in the Nature Conservation Act. Section 70 was interpreted as precluding the application of terms such as “national park” and “conservation park” to anything except protected areas declared under that Act. As a consequence, proposed “marine national park” zones in Moreton Bay had to adopt an alternative name of “protection zone”. Proposed “conservation park zones” had to adopt an alternative name of “conservation zone”. This legal impediment was removed during 2004 through amendments to s 70 of the Nature Conservation Act.

Secondly, in some north Queensland estuaries, a hybrid “estuarine conservation zone” has been used. This is discussed in more detail below.

With the introduction of the Great Barrier Reef Coast Marine Park in November 2004, zone names for the Great Barrier Reef were largely standardised. Some outdated names were dispensed with such as “marine national park A”, “marine national park B”, “general use B” and “conservation and mineral resource zone”.

To ensure future consistency, it is proposed that the new Regulation will include a standard set of zone names and objectives so as to:

- provide a consistent set of names and conservation principles for protected areas across land and water;
- enhance management and regulatory consistency across Queensland marine parks;
- provide for the protection of critical representative habitats whilst allowing elsewhere a spectrum of reasonable human uses; and
- increase public awareness of the range and value of highly protected areas within marine parks.

Estuarine conservation zone

This zone originated in 1990 as a temporary (3 to 5 year) concept intended to apply to a suite of eastern Cape York estuaries under consideration for possible marine national park zoning. The estuarine conservation zone was designed to provide the highest possible level of habitat protection without affecting any existing fisheries.

The zone contains objectives in relation to protection of habitat identical to marine national park zone, but does not affect any fishery except for trawling. The zone also precludes all forms of aquaculture, and is more restrictive than conservation park zone which allows for aquaculture without the addition of feed. The zone is an uncomfortable hybrid between “marine national park” and “habitat protection” and is difficult for the public and assessment officers to understand and interpret in practice.

The zone was applied in 1992 in 8 locations in the former Cairns Marine Park between Innisfail and Cooktown, and in 2001 in an additional 9 creeks and estuaries in the former Trinity Inlet/Marlin Coast Marine park between Cairns and Wonga Beach.

Once these areas come up for rezoning, it would be best if the management intent for these 17 locations were more closely examined, and the zoning brought into line with one of the standard zones used elsewhere in the Great Barrier Reef and the State.

Proposed amendments

Zone names

- It is proposed that in making a zoning plan, the following zone names will be used:
- general use zone;
- habitat protection zone;
- conservation park zone;
- buffer zone;
- marine national park zone;
- scientific research zone; and
- preservation zone.

The regulation will provide that a zoning plan may adopt other zone categories put in place under a zoning plan made under the *Great Barrier*

Reef Marine Park Act 1975. This will recognise the use of “remote natural area” zones currently used in the GBR, although this is not intended for use more widely outside the Great Barrier Reef.

A sunset provision will be inserted in relation to the use of “estuarine conservation zones” under the zoning plan for the Great Barrier Reef Coast Marine Park. It is proposed that the estuarine conservation zone be required under the new Regulation to be discontinued when the current Great Barrier Reef Coast Marine Park zoning plan is revised. Under the provisions of the *Statutory Instruments Act 1992* this would need to occur by 2015 or sooner.

Terminology in the Moreton Bay zoning plan is proposed to be revised at the same time as the new Regulation is drafted. A transitional arrangement will be included to allow references to the previous zone names on maps, signs, brochures etc. to be recognised until they are progressively phased out over time.

Highly protected areas

The new Act allows for the designation in regulations or zoning plans of “highly protected areas”. These are zones (or designated areas) that cannot be downgraded to a lower level of protection without details being tabled in Parliament, and which cannot be revoked or reclaimed without a Parliamentary resolution.

Under the new Act, all marine national park and conservation park zones are automatically classed as highly protected areas. It is proposed that in the new Regulation, the classification of highly protected area be extended to include buffer zones and scientific research zones.

Under existing zoning plans, these zones provide a higher level of protection than conservation park zones, and the reason that they were not included in the provisions of the new Act is that at the time of drafting the Act, there was still some uncertainty as to the standard zone names which would be adopted under State and Commonwealth zoning plans for the Great Barrier Reef. These plans have since been finalised.

Zone objectives

The regulation should be amended to outline the management intent of each zone similar to sections 16 to 26 of the *Nature Conservation Act 1992* in relation to protected areas.

The zone objectives should mirror those put in place under the Commonwealth's zoning plan. These are already reflected under the zoning plan for the Great Barrier Reef Coast Marine Park but should be extended to all other marine park zoning plans.

Assessment of options

There are two options:

1. To standardise zone names and objectives to allow for the systematic development of a marine park system across the State based on consistent terminology and conservation principles; or
2. To have different zone names and use and entry provisions in each marine park, with attendant public confusion, and lack of certainty over conservation and management objectives but a greater range of options to be applied to particular marine parks.

The first option is favoured.

The proposed change will have no impact on any marine park users.

There are inconsistencies between the Moreton Bay Marine Park zoning plan and other zoning plans in relation to the activities that can be conducted in certain zones. The most significant discrepancy is that trawling is allowed to occur in the habitat protection zone (currently called the "habitat zone") in Moreton Bay but not elsewhere in the State. These will be reconciled at the time of review of the Moreton Bay Marine Park zoning plan with full public consultation. The standardisation of zone names and objectives will not affect the activities which can be conducted under the current zoning plan.

Regulatory notices and declarations

Existing legislative environment

The current Regulation provides for the management of a number of activities on a site-by-site basis, such as prohibiting the entry of domestic animals, lighting fires in particular areas and the use of vehicles in declared areas (see sections 26, 26A and 26B of the current Regulation; sections 26 and 26B include controls on domestic animals and fires in the Capricornia Cays National Park and the Whitsunday Islands National Park).

Discussion

Sections 26, 26A and 26B of the current Regulation were introduced in late 2004 following public consultation on the draft zoning plan for the Great Barrier Reef Coast Marine Park and require no revision at this stage.

Many activities conducted on protected areas adjacent to marine parks are also managed on a site-by-site basis through regulatory notices. Such notices may:

- prohibit access to specified areas for conservation purposes;
- require permits to conduct special activities in specified areas (a special activity is an activity that may have an unusual or significant impact on cultural or natural resources, which needs special training or supervision before persons can safely engage in the activity or which may involve risk to the public);
- prohibit leaving or burying human wastes within distances specified from watercourses, campsites, walking tracks or other public facilities;
- prohibit the feeding of native animals (e.g. dangerous animals) in specified areas;
- permit the use of generators, compressors and other similar motors in specified areas;
- state the way food must be kept to prevent access by dangerous animals; and
- regulate activities for the purposes of reducing risks to public health and safety.

To promote a seamless approach to the management of marine parks that are adjacent to protected areas, similar mechanisms are desirable. In addition, there is a need to provide the power to regulate or prohibit certain activities in specified areas if an activity may endanger persons, to avoid conflicts of use, or provide for site management.

The following activities, for example, may necessitate exclusive use of an area either temporarily or permanently:

- photography, filming, education or research activities or public events which require controlled settings in order to deliver a quality product or service;

- fishing competitions, regattas, triathlons and swimming competitions which may endanger persons or be frustrated by other activities conducted in the same area;
- swimming or diving areas where the use of vessels, vehicles or aircraft would be dangerous; and
- intensive aquaculture operations (i.e. operations that involve structures or the addition of feed), or extensive aquaculture operations (i.e. operations that do not involve the addition of feed such as scallops, pearl oysters and clams) during harvesting periods or other critical periods of operation.

Proposed amendments

Sections 26, 26A and 26B of the current Regulation, which were introduced in late 2004, will be retained. In addition to the existing controls on domestic animals and fires in the Capricornia Cays and Whitsunday Islands national parks, tidal lands surrounding all island national parks might be considered as areas where domestic animals might be prohibited, to complement arrangements in place for management of these locations under the nature conservation legislation. Public comment is sought on this issue.

A new provision is proposed consistent with restricted access area provisions under the nature conservation legislation. For example, an area may be declared to be a restricted access area to:

- protect significant natural or cultural resources; or
- enable the restoration or rehabilitation of the area; or
- protect a breeding or roosting area for native wildlife; or
- protect an area of major interest; or
- protect individuals from potential danger.

To provide seamless management of marine park areas adjacent to protected areas, new regulations are proposed to mirror the following provisions under the current *Nature Conservation Regulation 1994*:

- 67 (a person must not conduct a special activity without a special activity permit in a specified area. A special activity is an activity that may have an unusual or significant impact on cultural or natural resources; or needs special training or supervision before a person can safely engage in the activity; or may involve risk to the public or

interfere with general public access to or use and enjoyment of an area);

- 68 (a person must not enter or remain in an area when entry is prohibited under a regulatory notice);
- 87 (a person must not feed an animal in an area if a regulatory notice prohibits the feeding of the animal);
- 88 (a person must not use a generator, compressor or other similar motor in an area prohibited under a regulatory notice); and
- 89A (a person must not conduct an act prohibited under a regulatory notice for the protection for the protection of public health and safety).

In addition, there is a need to provide a power to regulate or prohibit certain activities in specified areas if an activity may endanger persons, or to avoid conflicts of use. A power is also required to regulate the access, movement, mooring or anchorage of vessels at areas within marine parks by regulatory notice for conservation of the marine environment.

A regulatory notice should not be able to be used in a manner that would reduce the protection afforded by a zoning plan.

The regulations will not make it mandatory to erect a notice in a marine park at the site of the actual restriction. The logistics of erecting signs on buoys or structures in the water mean that “on the spot” signage is not always realistic, nor the most effective way to inform users. For example, the basic zoning or designated area provisions in marine parks are not advised to the public via signs “on the water”. They are advised through brochures, boat ramp signage, information through local boating and fishing outlets, through Government offices, on the internet and general public education programs, to ensure that users are generally well informed of the restrictions in place in their local area.

Nonetheless, it is essential for marine park users to be made aware of such notices and declarations (and the penalties associated with their contravention) through sufficient notification as well as signage where this is practical and appropriate. Given the relatively unrestricted nature of travel in the marine environment (as compared to the use of land) and the difficulty of installing signs, it is desirable that regulatory notices at least include:

- a notice erected or displayed in a conspicuous position at or near the area that is covered by the notice (e.g. as with marine park zoning plans, erecting notices at boat ramps to ensure people are aware of relevant requirements);

- a notice that is published in newspapers circulating generally around the area concerned; and
- a notice that is published on the Environmental Protection Agency's website.

Other options may include direct ranger presence on patrol vessels, radio announcements, and direct notification of affected groups at the time of the actual event. In addition, where it is practical and relevant to do so (e.g. for restrictions applying on beaches) the intention is that signs will be erected at the location where the restrictions apply.

As with regulatory notices under the nature conservation legislation, the notice would specify the limits of the area to which the notice applies and may expressly state that a contravention of a requirement of the notice is an offence and the penalty for the offence. It should be noted that prosecution for an offence would be unlikely if an individual could demonstrate that they were genuinely unaware of the notice or declaration.

Assessment of options

Three options are available:

1. Provide for the use of regulatory notices in marine parks. This mechanism has been available on protected areas under the *Nature Conservation Act 1992* for many years, and is frequently utilised in maritime settings (e.g. to prevent entry to seabird nesting sites on island national parks). Inclusion of a similar power for marine parks would extend this flexible and efficient management tool into intertidal areas, such as foredune areas often used by some species of seabirds.
2. Use other mechanisms available under legislation, such as amending regulations or zoning plans. This option is time-consuming and does not allow a rapid response to changing circumstances on a site-by-site basis. It does not provide for the seamless management of marine parks that adjoin protected areas. Whilst zoning plans can introduce enforceable management restrictions, such plans because of their regional focus are generally not a suitable tool for dealing with site-specific issues. Regulations could be made for each site-specific issue. However, this approach is not accepted on the basis that delivery of core functions under the Act is unnecessarily delayed and frustrated.

3. Rely on non-statutory notices that rely on public education and cooperation. The introduction of public education and voluntary compliance arrangements may give rise to conservation benefits. Such arrangements are not enforceable. This approach is only suitable in non-critical situations. It has been used successfully for beach protection in conjunction with measures such as foredune fencing and revegetation. However, it is not considered adequate in situations where the lives of vulnerable species may be involved, or where persons may deliberately or wilfully choose not to cooperate.

The first option is favoured.

Accreditation of management plans and other instruments

Current legislative environment

Processes are now in place under Part 5 of the *Great Barrier Reef Coast Marine Park Zoning Plan 2004* for the accreditation of educational or research institutions and management arrangements for harvest fisheries in place under the *Fisheries Act 1994*.

Discussion

Recent reform of State and Commonwealth legislation has increased the capacity for plans and other instruments made under other legislation to assist in the advancement of the object of the Act.

Section 5(2)(e) and (3) of the new Act recognises this opportunity by requiring that the object of the Act be achieved through a coordinated and integrated approach with other agencies and the community and using other legislation where appropriate.

Proposed amendments

The Chief Executive may, by publishing a notice in the gazette, accredit the use and entry of a marine park or area of a marine park under an instrument if the Chief Executive is satisfied that the accreditation of the use and entry is desirable in the interests of managing the marine park and the management arrangements under the instrument provide a sound basis for

the ecologically sustainable use and entry of the marine park, having regard to:

- The management arrangements for the use and entry under an instrument (eg Act, Regulation, Management Plan, Agreement, Approval etc.); and
- Other relevant matters.

If the Chief Executive accredits an instrument, the Chief Executive may also declare that either:

- a specified marine park authority (or parts of an authority) is no longer required by all persons, a group, organisation or public entity or an individual; or
- the instrument is a relevant matter when assessing applications for authorities.

The notice must:

- specify the instrument or part thereof that is accredited;
- specify the marine park, part of the marine park covered by the notice;
- state that the Chief Executive is satisfied that accreditation is desirable in the interests of managing the marine park; and
- specify either the use and entry that may be undertaken without a permission despite requirements of the regulation or a provision of a zoning plan or that the instrument is a relevant matter to be considered during the assessment of applications to use or enter a marine park.

Where the Chief Executive accredits an instrument and specifies that a marine park authority is no longer required, the Chief Executive may make the accreditation subject to conditions.

The Chief Executive should have the power to cancel an accreditation of a use and entry of a marine park or part of a marine park if the Chief Executive is satisfied:

- The management arrangements that apply to the use and entry under the instrument no longer provides a sound basis for the ecologically sustainable use and entry of the area; or
- The compliance arrangements for the use and entry are not adequate, or are not adequately enforced.

As an example, the Environmental Protection Agency and Department of Primary Industries and Fisheries intend to examine the use of the above

process to accredit development approvals for discharges from land-based aquaculture ponds into State marine parks to parallel similar accreditation under the Commonwealth's Great Barrier Reef Marine Park (Aquaculture) Regulations 2000. This will be progressed at the same time as drafting of the Regulation, with a view to accreditation immediately after the Regulation is proclaimed. Another example of where such accreditation processes may be applied is for the conduct of aquaculture (oystering) operations in the Moreton Bay Marine Park. The Department of Primary Industries and Fisheries may prepare a management plan for aquaculture (oystering) operations in Moreton Bay. Accreditation of such a plan under marine parks legislation would remove the zoning plan's permit requirement to operate an oyster ground or to conduct mariculture (depending on the technique of cultivation utilised) in relevant zones.

Accreditation would focus on the nature of the instrument to be accredited (e.g. statutory or non-statutory plan, permit, code, regulation, etc.), process (e.g. plan development, public involvement) and content matters (i.e. policy and planning proposals). It would involve an assessment by the chief executive against the purpose of the *Marine Parks Act 2004*, the objectives of the relevant zone and other relevant matters considered in assessing applications for use and entry. If the chief executive was satisfied, accreditation of the plan and removal of the permit requirement could occur. Accreditation could be made subject to specified conditions.

Arrangements for the accreditation of harvest fisheries, traditional use of marine resource agreements (TUMRAs) and research and education institutions under the zoning plan for the Great Barrier Reef Coast Marine Park will be retained to facilitate joint management arrangements with the Great Barrier Reef Marine Park Authority.

In addition, for the purpose of assessing applications to use and enter a marine park, the Chief Executive should be required to have regard to relevant plans made under the following legislation, for example:

- a management plan made under the *Nature Conservation Act 1992* for a protected area that is adjacent to the area of marine park that is covered by the application;
- a management plan made under the *Great Barrier Reef Marine Park Act 1975* for an area of the Great Barrier Reef Marine Park that is within or adjacent to the area of marine park that is covered by the application;

- a management plan made under the *Recreation Areas Management Act 1988* for a recreation area that is within or adjacent to the area of marine park that is covered by the application;
- a regional coastal management plan made under the *Coastal Protection and Management Act 1995* for an area that is within or adjacent to the area of marine park that is covered by the application; and
- an instrument accredited by the Chief Executive as a relevant matter for consideration during permit assessment.

Assessment of options

The above proposal will assist in minimising unnecessary restrictions on the community and simplify current legislation and management arrangements applying to the conservation, use and management of marine parks. The conservation objectives for particular areas of marine parks, however, will not be reduced by the proposed amendments. The accreditation of other instruments will be dependent upon the instrument providing similar conservation standards.

The above proposal can provide significant red tape reduction and will not impact negatively on any users.

An alternative to the above proposal would be to amend existing zoning plans to remove permit requirements currently in place. This option may result in a permanent removal of the legal capacity of the Chief Executive to influence critical decisions on conservation of a marine park. Similarly, this option does not easily allow the Chief Executive to reinstate existing zoning plan arrangements where an approval, management plan or other instrument is amended and no longer provides an adequate degree of protection.

Merit review of decisions

Current legislative environment

There is no provision for review of decisions under the current Regulation. In particular, there is no provision for merit review and remaking of a decision by a court or tribunal independent of the EPA.

A person dissatisfied with the outcome of a permit application may seek a review through the normal Queensland Government judicial review processes under the *Judicial Review Act 1992*. However, this avenue examines matters of process, not the merits of the decision.

The *Nature Conservation Act 1992* makes provision for merit review of decisions through a Magistrate.

The *Great Barrier Reef Marine Park Act 1975* makes provision for merit review to the Administrative Appeal Tribunal (AAT), preceded by an internal review process.

Discussion

In general, administrative decisions made under State and Commonwealth natural resource management legislation may be subject to either of two avenues of appeal; namely, merit review and/or judicial review.

Judicial review focuses solely on the lawfulness of a decision-making process. Under the *Judicial Review Act 1992*, the Supreme Court does not have the power to make a new decision, however, it may make an order:

- cancelling the decision or part of the decision;
- referring the matter back to the Chief Executive for further consideration subject to such directions as determined by the Court;
- declaring the rights of different parties; or
- directing any of the parties to do, or to refrain from doing, anything that the Court considers necessary to do justice.

Merit review, on the other hand, is a process whereby an administrative decision of the Government is reviewed “on the merits”. The facts, law and policy aspects of the original decision are reconsidered afresh under the same powers as were available to the original decision-maker. As opposed to judicial review, merit review bodies generally have the powers to:

- vary the decision;
- set aside the decision;
- make a decision in substitution for the decision; or
- remit the matter for reconsideration by the decision-maker in accordance with any directions or recommendations of the merit review body.

Given that only judicial review is available, the current Regulation is inconsistent with standards established under other State and Commonwealth legislation.

For State and Commonwealth marine parks in the Great Barrier Reef, most permits are processed as “joint permits” under both State and Commonwealth zoning plans, either to overcome jurisdictional uncertainties, or because the activity under the permit takes place in both State and Commonwealth marine parks.

The precise location of the inshore boundary of the Great Barrier Reef is not known in a very large number of locations. To cope with this difficulty, the Great Barrier Reef Ministerial Council agreed in 1982 that Queensland marine parks should be declared in the Great Barrier Reef so as to not only cover the intertidal area but also extend some distance to sea with zoning which mirrored that of the Commonwealth. Ministerial Council also agreed that single permits should be issued under the joint authority of both Commonwealth and State law for activities in adjacent or overlapping areas. Such permits (referred to as “joint permits”) have been in place since the mid 1980s.

If a merit review process is introduced for State marine parks requiring the “State” elements of a joint permit to be appealed to a Magistrate or to the Planning and Environment Court, with the “Commonwealth” elements needing to be appealed to the Commonwealth AAT, a person dissatisfied with a permit decision will face a complex process.

To be able to mount a successful appeal:

- For a development or activity in a fixed location, the person will need to know which jurisdiction applies to the site so as to determine which court or tribunal has jurisdiction to hear the matter. This may be straightforward in some situations, but will be exceptionally complex in other cases. As examples, complex questions have arisen in the past over State/Commonwealth jurisdictional boundaries in relation to marina developments on Magnetic Island and Keswick Island, aquaculture in Owen Channel, dredging at Heron Island, seaplane landings at Hoskyn Island reef, and numerous other situations. In some of these situations a final resolution would probably involve seeking a determination from the High Court, with considerable delay and expense.
- For developments or activities which cross both State and Commonwealth jurisdictions, a person would need to appeal twice, once to a State Court and once to the AAT, and would need to achieve

similar decisions in both appeals. Having to go through two processes would be a departure from the past track record of the State and Commonwealth Governments in seeking to achieve solutions in the Great Barrier Reef that seek to overcome jurisdictional uncertainties and minimise difficulties for the public. Further, if different decisions were handed down under two independent State and Commonwealth merit review processes, the demarcation of State/Commonwealth boundaries would become necessary, introducing further complications.

Proposed amendments

To achieve a workable merit review situation, it appears desirable for a merit review process to be established which would allow consideration of both State and Commonwealth elements of a joint permit.

It would be premature to finalise merit review options for marine parks in locations outside the Great Barrier Reef (such as Moreton Bay and Hervey Bay) until options for the Great Barrier Reef are further considered.

Proposals for merit review will not be immediately drafted into the new Regulation as they require detailed investigation, with possible amendments to the *Marine Parks Act 2004* and Commonwealth legislation.

There are also Constitutional implications that may need to be taken into account.

Subject to Constitutional arrangements and consultation between the State and Commonwealth Governments, if public comment indicates support for a joint State/Commonwealth merit review process, the actual amendments to introduce this arrangement would need to be made after full details had been worked out.

Assessment of options

In relation to merit review for joint permits in the Great Barrier Reef there are two options:

1. Seek to achieve a joint review process which seamlessly crosses areas of State or Commonwealth jurisdiction and removes any impediments created by jurisdictional uncertainty; or
2. Accept different State and Commonwealth merit appeal procedures.

For other parts of the State, the options are to provide a consistent process for all State marine parks both within the Great Barrier Reef and in other locations such as Moreton Bay and Hervey Bay, or to accept that the process in the Great Barrier Reef may need to be different owing to the joint permit arrangements.

It would be premature to present a preferred option at this stage when only the broad concept is being explored, recognising that the concept could not be advanced without Commonwealth support and detailed legal analysis.

Miscellaneous amendments

Table 2 provides a brief summary of proposed amendments to the current Regulation other than those dealt with above.

A copy of the current Regulation can be downloaded from <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/M/MarinePR90.pdf>.

Table 2: Provisions in the current Regulation and the manner in which they are proposed to be dealt with in framing the new Regulation.

Table 2.1: The following sections of the current Regulation will be omitted in the new Regulation as they have been incorporated into the *Marine Parks Act 2004*.

MP Regulation	Title of Regulation	Relevant section of the <i>Marine Parks Act 2004</i>
5C	Constituents of marine park	20
6	Contents of zoning plan	24
15	Preparation [of management plans]	29 to 33
16	Contents [of management plans]	32
17	Approval of plans	29
18	Amendment etc. of plans	34 to 39
27	Temporary restricted areas	95 to 98
36	Appointment of inspectors	52 and 53
37	Identity cards	54
38	Powers of inspectors	Part 5

MP Regulation	Title of Regulation	Relevant section of the <i>Marine Parks Act 2004</i>
40	Return of marine products or apparatus	80 to 83
43	Liability for offences	138

Table 2.2: The following sections of the Regulation will be modified as indicated below.

Issue	MP Reg	Title of regulation	Proposed amendments
Declaration of marine parks	4	References to latitudes and longitudes	Schedule 4 currently does not contain the marine park declarations and boundaries for Hervey Bay Marine Park and Woongarra Marine Park. These were declared by Order in Council under outdated legislation.
	4A	References to H.A.T., high water etc.	
	4B	References to relevant mangrove line	
	4C	References to bracketed reef numbers	
	5B	Area declared to be marine park	All marine park declarations and boundaries should be consolidated.
	5D	Name of marine park	
	5E	Amalgamation of particular marine parks	
	Schedule 4	Areas declared to be marine parks	

Issue	MP Reg	Title of regulation	Proposed amendments
Fees	5	Fees	Refer to “Marine park permit assessment fees” above for more detailed discussion with respect to assessment fees under Schedule 1 and 2 of the current Regulation.
	5A	Indexation of fees	
	Schedule 1	Fees for assessment of application for permission to carry out tourism activity	
	Schedule 2	Fees for assessment of application for continuation of permission to carry out tourism activity	The provisions on fees and the fee schedules will remain, with amendments discussed above. The daily fees for commercial whale watching will be retained, but would in due course be replaced by commercial activity agreements involving negotiated financial contributions.
	Schedule 3	Fees for permission, or continuation of permission, to carry out a commercial whale watching program	
Management of permissions	9	Application for permission to enter or use	The Regulation should be updated so that it is possible to issue and manage joint permits under the <i>Great Barrier Reef Marine Park Regulation 1983</i> as well as allowing for integration of permits with the nature conservation legislation. Additional amendments are proposed above in relation to commercial activity agreements as an option to permits.
	9AA	Advertising application in particular circumstances	
	9AB	Matters Chief Executive may or must consider for considering application	
	9AB	Matters Chief Executive may or must consider for considering application	
	9A	When fee payable—commercial whale watching program	
	10	Grant or refusal of permission	

Issue	MP Reg	Title of regulation	Proposed amendments
	10A	Restrictions on grant of permission	
	11	Revocation of permission	
	13	Continuation of permission	
Marine park offence provisions	8A	Entry and use of zones and designated areas	Unzoned State marine parks are managed under the current Regulation through the provisions of “Part 5—Conduct of Persons”. There are sections of this Part of the Regulation that require permits for development works, removal of materials, structures, and the operation of businesses. These general provisions are normally interpreted as being superseded by the more specific provisions of a zoning plan once a zoning plan has been developed and approved.
	19	Removal of materials etc. prohibited	
	20	Discharging etc. of wastes	
	21	Building prohibited	
	22	Living on vessels, vehicles, aircraft or structures	
	23	Littering	
	24	Abandonment of vessels, vehicles or aircraft	
	25	Introduction of marine products	
	26	Entry of domestic animals	
	26A	Entry of vehicles into particular areas	
	26B	Lighting of fires in particular areas	
	27	Temporary restricted areas	Other provisions in this Part relate to littering, living on vessels, firearms, control of domestic animals and a range of other matters and are applicable to all marine parks, not just unzoned ones.
28	Signs to be obeyed		

Issue	MP Reg	Title of regulation	Proposed amendments
	30	Use of firearms	<p>It is necessary in the new Regulation to clarify which of these provisions are intended to apply only to unzoned marine parks and those which are intended to apply to all marine parks, zoned and unzoned.</p>
	31	Trading and other activities	
	32	Disorderly behaviour	
	32A	Motorised water sports	
	33	Prohibition on taking marine products	
	34	Offences relating to spear fishing	<p>The new Regulation will consequently include specific provisions applying to unzoned marine parks, generally similar to the present provisions on works and development, but not extending to trading, advertising and organised events (s 31).</p>
	35	Prohibitions on taking large groper	

Issue	MP Reg	Title of regulation	Proposed amendments
			<p>subject to any terms imposed by the Chief Executive, so as to minimise regulation until zoning is finalised.</p> <p>There are currently no unzoned areas of marine park, although the option of declaring an unzoned marine park to allow for basic management whilst zoning proposals were finalised was adopted for Moreton Bay, and has been standard practice for all sections of the Commonwealth Great Barrier Reef Marine Park. It is an option available to Government that is likely to be applied from time to time in the future.</p> <p>The proposed provisions on unzoned sections will be considerably less restrictive than the current Regulation.</p> <p>The regulation on taking large cod and groper (s 35) will be omitted as species protection is now adequately covered in zoning plans.</p>

Issue	MP Reg	Title of regulation	Proposed amendments
Miscellaneous	1	Short title	To be updated in line with current drafting practice.
	2	Definitions	To be updated in line with current drafting practice and standard marine park terminology.
	3	Notes in text	To be updated in line with current drafting practice.
	7	Designated areas	Retain, but remove the ability of the Chief Executive to introduce new designated areas outside the framework of a zoning plan.
	8	Saving	Update in accordance with current drafting practice.
	13A	Requirements about giving authorisations under permission	This provision was introduced in late 2004 following public consultation. No further amendments are proposed.
	13B	Effect of authorisations given under permission This provision was introduced in late 2004 following public consultation. No further amendments are proposed.	This provision was introduced in late 2004 following public consultation. No further amendments are proposed.
	14	Entry in an emergency Delete.	Delete. These provisions now duplicate provisions included in zoning plans.

Issue	MP Reg	Title of regulation	Proposed amendments
	18A	Chief Executive may give directions for carrying out activities in a zone	The existing zoning plans should be updated for consistency and to reflect special access provisions currently under Part 5 of the Commonwealth zoning plan. These provisions relate to access for the purposes of safety, emergencies, environmental monitoring, navigational aids, defence operations, government survey, and Aboriginal or Torres Strait Islander custom or tradition.
			The Commonwealth zoning plan can be viewed at the following address: http://www.gbrmpa.gov.au/corp_site/management/zoning/documents/Zoning_Plan.pdf
	44	Giving of notices	Update in accordance with current drafting practice.

Issue	MP Reg	Title of regulation	Proposed amendments
Transitional arrangements—GBR Coast MP	44A	Definitions for Part 9	These provisions were introduced in late 2004 following public consultation. No further amendments are proposed.
	44B	Continuing effect of relevant permissions	
	44C	Applications in progress for permission	
	44D	Particular previously authorised conduct still authorised—first 120 days after commencement	
	44E	Particular previously authorised conduct still authorised—after first 120 days after commencement	

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.

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