



Environmental Defenders Office

31 March 2023

Minister Meaghan Scanlon MP
Minister for the Environment and the Great Barrier Reef
By email: environmental@ministerial.qld.gov.au

CC:
Jamie Merrick
Director-General
Department of Environment and Science
By email: jamie.merrick@des.qld.gov.au

Rhiannyn Douglas
Policy Advisor
Office of the Hon. Meaghan Scanlon MP
By email: Rhiannyn.Douglas@ministerial.qld.gov.au

CONFIDENTIAL AND PRIVILEGED

Dear Minister Scanlon,

RE: Nature Conservation Act amendments to protect estuarine crocodiles

1. We act for Mr Bob Irwin, a longstanding conservationist who has work passionately with crocodiles over the course of his life.

Background

2. Mr Irwin contacted us in response to the saltwater crocodile interaction at Ayton boat ramp on the Bloomfield River on 22 February 2023.
3. On 22 February 2023, Alistair MacPhee pressed record on his video camera and can be seen entering the water, from Ayton boat ramp on the Bloomfield River and had an interaction with a large Saltwater crocodile. We have been instructed that he did this despite being cautioned by locals and sighting prominent government warnings signs advising him otherwise. The crocodile immediately killed his dog Molly, and Mr MacPhee was injured. As a result of the incident the crocodile was euthanised under the Crocodile Management Plan as a problem

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crocodile. There have been concerns raised in the community that another crocodile was also euthanised in this process.

4. Ms Kathleen Walker, a Kuku Yalanji Traditional Owner residing on Wujal Wujal land has also instructed us that she is representing the voice of Traditional Owners across our local clans Kuku Yalanji, Kuku Nyungul and Julunji.
5. Ms Walker's Letter of support annexed to this Letter explains the importance of the saltwater crocodile:

"Our people have a culture that relates to the environment in a holistic way that also includes connections to powerful and significant totems. It is a continuous spiritual connection that has endured for millennia. Totems link our Bama (Aboriginal people) to the universe. It links us to air, land, water and geographic features. Traditional Owners hold this responsibility in our lifetime to do the right thing by our totems and pass that on to the next generation. This creates a balance of use and protection. The Bilngkumu (crocodile) is the spirit of our ancestors.

When you understand that everything is interconnected, then you can understand that the country talks to us. The country is our guide, our boss, our rangers. We are the responsible custodians of this lore. The euthanasia of the two crocodiles because of the incident at Ayton boat ramp has deeply saddened our people. It was completely unnecessary and avoidable."

6. Mr Irwin, Traditional Owners, scientists, tourism operators, conservationists and other stakeholders and community members are concerned that the Department of Environment and Science does not have the power to regulate certain reckless behaviour which is putting human and crocodile lives at risk.

Recommendations

7. Both the Department of Science and the Department of Fisheries have communicated that they have no legislative powers to regulate reckless behaviours in crocodile habitat.
8. We have drafted amendments to the *Nature Conservation Act 1992* ("NCA") and subordinate legislation to address this gap in regulatory power.
 - a. **creation of an offence for recklessly using crocodile habitat;**
 - b. **providing the Chief Executive the power to map crocodile habitat;**
 - c. **provide aggravated or increased penalty for an offence under regulation 334 for disturbing a crocodile; and**
 - d. **provide aggravated offence with an increased penalty for recklessly using a crocodile habitat and or disturbing a crocodile for the purposes of social media publication.**

Important: None of these proposed amendments will limit anyone's right to enter and enjoy waterways in Queensland.

9. The legislative amendments must be paired with a public education campaign and resources to allow people to make informed choices when in crocodile habitat.

Current legislation

10. The NCA governs the protection and conservation of nature, including native wildlife.
11. The *Bilngkumu* (estuarine crocodile) is listed as Vulnerable¹ and considered protected wildlife.²

Section 88 - Unlawful take.

12. Pursuant to section 88(2) of the NCA a person must not take a protected animal unless the person is an authorised person and the taking is authorised under the Act. Where the taking is of an animal listed as vulnerable, it carries a maximum penalty of 225 – 3000 penalty units depending on the amount of animals taken.
13. Take in relation to an animal includes to hunt, shoot, wound, kill, skin, poison, net, snare, spear, trap, catch, dredge for, bring ashore or aboard a boat, pursue, lure, injure or harm the animal or attempt to do one of these acts. This offence requires an intention to do one or more of these acts.
14. The intention element of the offence can be difficult to establish in relation to crocodiles, as crocodiles are ambush predators and their actual presence in the area may be unknown until an interaction occurs.

Regulation 334 – Disturb a dangerous animal

15. Pursuant to reg 334 of the *Nature Conservation (Animals) Regulations 2020* (“NCA Regs”) a person must not disturb a native animal in the wild if the animal is dangerous or venomous, or capable of injuring a person. However, this will not apply if the disturbance was in the course of a legal activity and could not reasonably have been avoided.
16. This may apply to the interactions with crocodiles as it could be argued that the disturbance could have been reasonably avoided if average judgement is demonstrated. There is an argument that in many situations, disturbing a crocodile can be avoided if Crocwise behaviour, as outlined in the Crocodile Management Plan, is followed.

Responses from DES and DAF

17. We have contacted your office requesting a response from the Department as to whether an offence under regulation 334 was considered regarding the Bloomfield matter.
18. On 28 March 2023 we received a response that “*Advice at this stage is that the acts, while discouraged, do not amount to a criminal offence under the legislation administered by DES*”.

¹ *Nature Conservation (Animals) Regulation 2020* Sch 1, 33.

² NCA Sch 1.

19. Further, the Office of the Minister for Agricultural Industry Development and Fisheries confirmed by letter on 17 March 2023 that Mr MacPhee, in leading his dog into crocodile habitat did not breach provision of the *Animal Care and Protection Act 2001*.
20. Reckless behaviour in crocodile habitat is becoming an ongoing issue as social media is seeing more and more behaviours such as this being rewarded. Following the Bloomfield matter, a young man uploaded a video of himself on social media diving into the Tully River which could also have resulted in an interaction.³ Should this have occurred then the crocodile would have been managed under the Crocodile Management Plan and likely killed.
21. There exists a clear gap in the legislation where people who are using crocodile habitat without regard to the risks and dangers of crocodiles are not deterred or penalised for those actions. This is leading to poor outcomes for both humans and crocodiles.
22. It is important that people are able to use and enjoy waters in our crocodile habitat. However, that enjoyment must be tempered by taking reasonable precautions due to risk of harm that come with disturbing crocodiles in their habitat.

Proposed amendments to the *Nature Conservation Act 1992*

23. We are unable to manage crocodile behaviour to reduce human and crocodile interaction, therefore it is our duty to manage human behaviours through deterrence measures for those who choose to recklessly use crocodile habitat.
24. The many letters of support to these recommendations and annexed to this Letter explain how culling crocodiles is not the answer to reducing crocodile and human conflict. When a large crocodile is removed, another large crocodile or various younger crocodiles will compete for the territory. Traditional Owners explain that conflict becomes a higher threat for communities when a new crocodile(s) enters the territory, as the behaviours are not known and risk management becomes far less certain.
25. Legislative reform is required to reduce the likelihood of harm to both humans and crocodiles.
26. The proposed amendments will allow the use of crocodile habitat for legal purposes (fishing, boating, swimming) provided it is done taking reasonable precautions, or being 'Crocwise'.

Reckless use of crocodile habitat

27. To deter and penalise behaviour likely to result in harmful interactions between crocodiles and humans, we recommend the following amendment to the NCA:

³ Cairns Post, 5 March 2023 <https://www.cairnspost.com.au/news/cairns/call-to-beef-up-regulator-power-and-punish-reckless-influencers/news-story/da0c449512c84cf411990aadd5390714>.

88AA Restrictions relating to estuarine crocodile habitat

- (1) A person must not recklessly use estuarine crocodile habitat unless the person is an authorised person under this Act.

Maximum penalty— 80 penalty units

In this section –

Estuarine crocodile habitat means an area identified as crocodile habitat under a regulation.

28. In criminal law, a person is ‘reckless’ if:
- they are aware of a substantial risk; and
 - having regard to the circumstances known to them, it is unjustifiable to take that risk.⁴
29. The level of ‘risk’ involved with using crocodile habitat depends on the zoning of the crocodile habitat and other relevant circumstances (signage, recent reports, warnings etc). Whether the risk is justified, will depend on if a person has taken reasonable precautions to assess and address that risk. Reasonable precautions, would be Crocwise behaviour.
30. The Crocodile Management Plan divides Queensland into Crocodile Management Zones, and details what is Crocwise behaviour for each zone as different areas will require different ranges of precautions.
31. In addition to specific behaviour for each Zone, it outlines general Crocwise behaviour as:
- Understand that management of crocodiles never completely removes the risk that a crocodile may be present.
 - Know that crocodiles are ambush predators and evidence of their presence may not be obvious.
 - Pay attention to any warning signs at the locations you visit.
 - Be aware that crocodiles can attack people in boats and the smaller the boat the greater the risk.
 - Pay attention to zone specific Crocwise messages.
 - Whenever you see a crocodile, report it to CrocWatch by calling 1300 130 372.
 - Avoid incidental or deliberate feeding, e.g. leaving food scraps near the water, or disposing of bait at boat ramps.⁵
32. As the use of “reckless” places an emphasis on personal responsibility, it also allows for the nuances of individual knowledge and experience. There are a variety of factors not included in the Crocodile Management Plan which are important to an individual’s assessment of risk.

⁴ Commonwealth Criminal Code 5.4, see also – Benchbook No 197.2, Proof of Mental and Physical Offences: Commonwealth Offences.

⁵ Crocodile Management Plan at page 11.

Penalty

33. 80 penalty units is comparative to disturbing a dingo on K’gari under Regulation 334 of the NCA Regs.

Defining crocodile habitat

34. ‘Crocodile habitat’ is defined and mapped already in the Crocodile Management Plan.
35. The Crocodile Management Plan and Management Zones are not statutory documents or referenced in the NCA or subordinate legislation. To link the mapping in the Management Plan to these proposed amendments, the boundaries of crocodile habitat will need to be identified in the NCA or NCA Regs with reference to the Crocodile Management Plan.
36. Allowing the crocodile habitat to be identified by the Chief Executive under the regulations provides for flexibility to change the mapping as better science becomes available.
37. We recommend providing the Chief Executive with the power to identify crocodile habitat. The Chief Executive has similar powers in relating to making codes of practice.

Nature Conservation (Animals) Regulation 2020

(alternatively *Nature Conservation (Estuarine Crocodile) Conservation Plan 2018*)

XX Crocodile Habitat

- (1) The chief executive may identify crocodile habitat.
- (2) The chief executive must ensure a map of crocodile habitat is available for public inspection, free of charge, on the department’s website.

Note –

Crocodile habitat is identified in the Crocodile Management Plan as Crocodile Management Zones.

38. The Minister could alternatively identify crocodile habitat through including it in the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2018* under section 120H of the NCA.

Greater penalties for disturbing crocodiles

39. We recommend further amendments to reg 334 of the NCA Regs to provide a greater penalty for disturbing a crocodile.
40. Under the current regulation the penalty for disturbing a dangerous animal is 40 penalty units, unless that animal is a dingo on K’gari, in which case the penalty is 80 penalty units.
41. A greater penalty is warranted for disturbing crocodiles in crocodile habitat due to the increased risk of harm to both humans and crocodiles as a result of interactions.

42. We recommend a penalty of 225 penalty units. This penalty is comparative to a class 3 offence under s88, which would involve a taking of 1-2 vulnerable animals (crocodile is listed as vulnerable). This is appropriate as when a crocodile is disturbed, the result is often the removal or death of the crocodile under the Crocodile Management Plan.
43. As such, we recommend the following inclusion to regulation 334 of the NCA Regs:

334 Disturbing particular native animals in the wild

- (1) A person must not disturb a native animal in the wild if the animal is a dangerous or venomous animal, or capable of injuring a person, unless the person is an authorised person or the disturbance is authorised under the Act.

Maximum penalty –

- (a) if the animal is a dingo and the offence is committed on Fraser Island – 80 penalty units; or
(aa) if the animal is a crocodile and the offence is committed in crocodile habitat – 225 penalty units; or
(b) otherwise – 40 penalty units.

Aggravated offences for posting on social media

44. Many recent incidents have been filmed and published on social media. Social media is providing an incentive to film interactions with dangerous wildlife. The incentive may be through fame or a monetised reward.
45. Posting on social media as the additional effects of obscuring the safety messages from government, diminishing the perception of risk and encouraging others to seek out similar wildlife interactions.
46. We recommend the inclusion of aggravating circumstances for the publishing of material on social media, similar to that in section 208A of the Criminal Code, to both the new offence under s88AA and the current offence under regulation 334.
47. An aggravated additional penalty of 40 penalty units is recommended. However, this penalty may need to be reviewed in consideration to the monetary reward that may be gained from publishing on social media.

Retention of right to use beaches and waterways

48. The above amendments seek to strike a balance between deterring and penalising reckless behaviour in crocodile habitat while still allowing the use of Queensland’s beaches and waterways. They will not limit any existing rights to enjoy our natural environment.

49. The amendments align with the Draft 'Be Crocwise Strategy 2023-2028' by aiming to reduce negative crocodile interactions through self-responsibility, informed decision making, and changing the way people behave when entering and using crocodile habitat.

Example: Tully River

50. Under the Crocodile Management Plan Zoning Map, Tully River is categorised as Zone C – Targeted Management Zone.
51. In addition to the general Crocwise behaviours in paragraph [31] above, the Management Plan outlines Crocwise knowledge and behaviours in Zone C to include:
- a. Understand that while the removal of a large crocodile or a crocodile displaying dangerous behaviour in this zone is the responsible action to take to reduce the immediate risk of a negative interaction with a crocodile, it is unlikely to eliminate the overall risk that crocodiles pose to humans in the area.
 - b. Always adhere to safety messages, which may be targeted at typical activities undertaken in the area (e.g. launching a boat, swimming).
 - c. Remember that the removal of crocodiles often creates vacant territory that is quickly filled by the next most dominant animal.
 - d. Even when crocodiles are removed, other crocodiles are still likely to be present within the zone, so it is important to comply with Crocwise safety messages, including warning signs.
 - e. Know how to look for signs of a crocodile before going near the water (for example, slide marks near the water).
 - f. If a crocodile is present in the area, report it to CrocWatch.⁶
52. A person swimming in Tully River would not be 'recklessly using crocodile habitat' if, prior to and during the swim, they exercised Crocwise behaviour by:
- a. checked and obeyed any warning signs;
 - b. inspected the area for signs of crocodiles; and
 - c. considered local factors (dry vs wet season, elevation of this section of the river etc).
53. In contrast, if that section of the Tully River had a sign prohibiting swimming generally due to crocodile habitat, or one that indicated that a crocodile had been sighted in that location, the choice to swim in that location despite the warnings would be considered reckless. Other uses besides swimming could also be considered reckless, including bringing animals into the area and leaving bait around the banks.

Public education campaign

54. The legislative amendments must be paired with a public education campaign and resources.
55. The Draft 'Be Crocwise' Strategy contains a communication approach that can be leveraged to include the offences and penalties as reinforcement to the behavioural change messaging.

⁶ Crocodile Management Plan at page 15.

56. In-situ resources such as the crocodile warning signs could be updated to include Crocwise behaviour alongside penalty warnings. The dingo signs on K'gari are a good example of informative signage encouraging safe behaviour.

Problem crocodile management

57. The current management practices of defining and removing 'problem' crocodiles requires further review as they do not align with Customary Lore, Traditional Knowledge, and current scientific knowledge.
58. As outlined in Ms Walker's letter, crocodiles hold an important place in the culture of Traditional Owners of Wujal Wujal Country. Traditional Knowledge allows her community to live around the river and the removal of crocodiles affects their ability to follow that way of life.
59. Scientific knowledge on the ecological impact of the removal of large crocodiles from an environment aligns with Traditional Knowledge. The enclosed letters of support by Professor Griggs and Mr Sideleau note the stabilising presence a large crocodile has to its environment, and that the removal may destabilise the area and increase risk from smaller crocodiles fighting for new territory or a new large crocodile whose behaviours and patterns are not known.
60. We recommend that DES review the Management Plan and undertake further consultation with First Nations peoples and bodies and scientific experts on how crocodiles can be managed in line with Customary Lore to provide the best ecological outcomes.
61. In principle, local First Nations communities must be directly involved in the decision making and management of crocodiles on Country.

Other Amendments

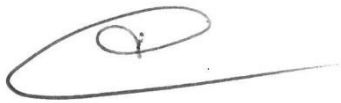
62. During our examination of s88, as it related to crocodiles, we have identified an error in the drafting of s88.
63. Section 88(2) relates to a protected animal. Protected animal is defined in the Schedule Dictionary as 'an animal prescribed under the NCA as threatened, near threatened, or least concern wildlife'.
64. This definition would exclude vulnerable, endangered, critically endangered, extinct in the wild and extinct wildlife. There is a clear intention in s88 for it to cover these categories as subsections (5) & (6) provided for tiered penalties for takings of animals in those categories.
65. We recommended that the definition of protected animal be expanded to include vulnerable, endangered, critically endangered, extinct in the wild and extinct wildlife.

Summary

66. The current legislation does not authorise the department to regulate reckless human behaviour which puts the lives of people and crocodiles at risk. The recommended amendments will place personal responsibility at the forefront without limiting existing rights to use our beaches and waterways.
67. The amendments are consistent with the Draft 'Be Crocwise' Strategy and, when combined with a public education campaign and resources, will empower the public to make informed choices when in crocodile habitat.
68. We have enclosed letters of support from concerned community members who have formed the group Community Representation of Crocodiles (CROC) as detailed in Enclosures below.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Kirstiana Ward

Managing Lawyer, North Queensland

Enclosures:

Name		Position/organisation
<u>Traditional Owners</u>		
1	John Hartley	Chairperson, Kubirriwarra Yalanji Aboriginal Corporation
2	John Murison	Jarramali Rock Art Tours & Western Kuku-yalanji Traditional Owner
3	Kathleen Walker	Representative of Traditional Owners across local Wujal Wujal clans Kuku Yalanji, Kuku Nyungul and Kuku Julunji that wish to speak for County.
<u>Science and Research</u>		
4	Brian Coulter	Ecologish, Saltwater Ecology
5	Brandon Sideleau	Researcher, CrocAttack (CrocBITE)
6	Gordon Grigg	Emeritus Professor, University of Queensland
7	Jennie Gilbert	Co-founder, Cairns Turtle Rehabilitation Centre
8	Kade Skelton	Doctoral researcher, Charles Darwin University
9	Nicholas Lubitz	PhD candidate, James Cook University
10	Nick Stewart	Herpetologist
<u>Community</u>		
11	Ben Dessen	Zoologist
12	Brandon Troy Gifford	Reptile keeper
13	Cesar Puecharmin	Student veterinarian
14	Daniel Rumsey	Zookeeper
15	Debbie Nutty	Livestock producer
16	Dylan Willis	Venom keeper
17	Elizabeth Morgan-Brett	CEO
18	Ferenc Isaak	Aquarist
19	Jack Jenkins	Student
20	Josiah Rossic	Student
21	Krystal Stewart	Teacher
22	Neil Wright	NQ Resident
23	Paul Bowen	Fauna spotter
24	Shannon Di Blasio	Veterinary nurse
<u>Conservation</u>		
25	Frank Mikula	Koala Sanctuary Curator
26	Fruzina Strausz	Conservationist
27	Jared Wolff	Turner Family Foundation
28	Jeff Hanson	Managing Director, Sea Shepard Australia
29	John Ryan	Zoologist
30	Kurt Jones	Co-founder, Co-Exist Australia
31	Malcom Kilpatrick	President, Save Fraser Island Dingoes Inc.
<u>Private Enterprise</u>		

32	Barry Lyon	Lyons Bush Guides - Cooktown
33	Brian Ross	Ecologist, Cockatours
34	David White	Solar Whisper Wildlife Cruises
35	Harrison Warne	Ecologist and Science Communicator, Lacelid Productions
36	Jarrold Schenk	CEO, Wildlife HQ Zoo
37	Matt Cornish	Wildlife Educator & Tour guide
38	Mick Bender	Wildlife Educator, Wildlife Unleashed
39	Nick Petropoulos	Wildlife Educator, Wicked Wildlife
40	Patrizio Lazzaro	Snake handler, A1 Snake Rescue
41	Stuart McKenzie	Snake handler, Sunshine Coast Snake Catchers
42	Tommy Hayes	Crocodile and Cane Knife Pty Ltd