



Our reference:

Mr Stephen Palethorpe
Secretary
Senate Environment and Communications
Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

28 JAN 2011

Dear Mr Palethorpe

I refer to your letter of 26 November 2010 to the Premier, the Hon Kristina Keneally MP, concerning the Inquiry into Environment Protection and Biodiversity Conservation Amendment (Prohibition of Support for Whaling) Bill 2010. The Premier referred your letter to the Minister for Climate Change and the Environment, the Hon Frank Sartor MP, and I am replying on the Minister's behalf.

The NSW Department of Environment, Climate Change and Water (DECCW) is the agency responsible for the protection of marine mammals in NSW waters. DECCW coordinates programs and administers legislation to ensure the conservation, protection and appreciation of marine mammals.

A number of measures are in place to protect marine mammals in NSW waters, including whales including regulating the impact of boating, swimming and other activities on whales and other marine mammals, through measures such as prescribed approach distances and prohibiting certain activities.

DECCW's responsibilities in relation to marine mammals are outlined in more detail in Attachment 1.

DECCW and Maritime NSW have reviewed the proposed Bill and have identified potentially wide-ranging legal implications associated with the proposed introduction of a 'support for whaling' offence. While the NSW Government is generally supportive of efforts to reduce whaling in Australian waters, the potential legal ramifications of introducing a 'support for whaling' offence need to be fully explored.

In particular, DECCW is concerned that some activities that it undertakes may be captured by the broad definition of 'whaling' proposed under the Bill. An example is the treating of whales for the purposes of an autopsy. While the proposed Bill does not create a new 'whaling' offence, the proposed 'support for whaling' offence may render any organisation which supports DECCW in this activity guilty of an offence.

A broad range of activities undertaken by other state government agencies, private companies and individuals may be impacted by the introduction of a 'support for whaling' offence. Activities such as refuelling, restocking and providing telecommunications services to vessels involved in whaling activities may be captured by the proposed offence.

I also note that under the proposed Bill, the 'support for whaling' offence appears to apply to the coastal waters of a state or territory, without requiring the approval of the state or territory. The existing whale protection provisions of the *Environment Protection and Biodiversity Conservation Act 1999* apply only to coastal waters of a state or territory if so declared by the Act's regulations, with the approval of the relevant state or territory minister.

While the NSW Government is committed to working with the Australian Government and other states and territories for the protection of marine mammals in Australian waters, detailed exploration of the potential legal ramifications of introducing any legislative change is needed. I therefore suggest that consultation be undertaken with the NSW Ministers for Climate Change and the Environment and Ports and Waterways during the development of the Bill.

Yours sincerely

LISA CORBYN
Director General

Encl. Attachment 1

ATTACHMENT 1

The NSW Department of Environment, Climate Change and Water (DECCW) is the agency responsible for the protection of marine mammals in NSW waters. Marine mammals are defined as all animals of the orders of Cetacea, Sirenia and Pinnipedia, which includes whales.

DECCW coordinates programs and implements legislation to ensure the conservation, protection and appreciation of marine mammals. DECCW's key activities in relation to marine mammals, including whales, are outlined in more detail below.

Marine fauna incidents

- DECCW coordinates incident response for entangled, entrapped, stranded, injured and distressed marine mammals.
- This can involve euthanasing marine mammals in some circumstances and treating mammals for autopsy purposes.
- Where practical and feasible, DECCW coordinates the rehabilitation of marine mammals.
- DECCW ensures international treaties are complied with in marine fauna incident response.

Regulating activities affecting whales

- DECCW administers the *National Parks and Wildlife Act 1974*, the *National Parks and Wildlife Regulation 2009* and the *Threatened Species Conservation Act 1995*.
- This legislation:
 - sets prescribed approach distances for marine mammals by vessels, aircraft and individuals;
 - prohibits certain vessels and activities within the vicinity of marine mammals;
 - regulates the operation of vessels within the vicinity of marine mammals;
 - makes it an offence to harm or interfere with a marine mammal

Research

- DECCW coordinates and undertakes research on marine mammals. This involves aerial and boat surveys, as well as research on deceased or euthanased specimens.
- DECCW reviews and authorises other parties to undertake marine mammal research through the issuing of scientific licences.

Marine Parks

- DECCW regulates commercial whale watching operators within NSW marine parks.