



Submission to the Independent review of the *Environment Protection and Biodiversity Conservation Act 1999*

This submission is on behalf of Whales Alive (WA)

The concerns of Whales Alive are relevant to sections of the *EPBC Act 1999* that relate to the conservation, management and protection of cetaceans and marine ecosystems within Australian waters.

The development of the Australian Whale Sanctuary that has been established under the Act to protect all whales and dolphins found in Australian waters is an encouraging step to conserving these ecologically significant animals. But, the effectiveness of the Australian Whale Sanctuary provisions falls short for a number of reasons.

The EPBC Act does not currently provide appropriate protection for cetaceans in Australian waters. There are a number of elements that Whales Alive believe must be included in the legislation to improve the provisions for 'special' protection under the Act.

Conservation of Australia's Biodiversity

- Australian waters support a diverse range of coastal and oceanic cetacean species that inhabit a large number of marine ecosystems. Cetaceans are extremely vulnerable to the cumulative impacts from numerous human activities. The *EPBC Act* does not currently provide sufficient protective measures to conserve and protect cetaceans in Australian waters. Coastal cetaceans are exposed to an increasing number of human activities, decreased water quality, increased pollution levels, habitat degradation and an assortment of other environmental issues. Migratory cetaceans also face the cumulative effects of human activities along their migratory path that includes both State and Federal waters, that can lead to increased stress levels, which can have a critical impact on these animals that have extremely restricted and fragile energy budgets.
- In some cases for populations of coastal cetaceans including snubfin dolphins (*Orcaella heinsohni*), Indo-Pacific Humpback dolphins (*Sousa chinensis*) and bottlenose dolphins (*Tursiops sp.*), direct localized impacts have resulted in a reduction in the populations to the extent that genetic diversity has been reduced and their geographic distribution are highly isolated. Coastal cetaceans currently do not have sufficient protection by federal, state or territory governments. The

issue of the increased vulnerability of localized populations near highly impacted regions is of environmental national significance and risks the health of Australia's biodiversity. This is evidence of fragmentation of species which can result in the demise of genetic diversity and therefore the viability of populations. We encourage the federal government through the improvement of the regulatory framework of the *EPBC Act* to set an example and provide special provisions for coastal cetaceans to increase the conservation and protection for these animals and the marine ecosystems which they rely on to survive. Improvement to the assessment and approval of projects through bilateral agreements that may have an impact on species and ecosystems of national significance would provide an increased level of protection to coastal cetaceans. Without increased protection and coordination between state and federal government through legislative actions, these populations will continue to demise. Bilateral agreements between state and federal governments must make allowances in the approvals and evaluation process for the cumulative effects of activities.

- For migratory species that cross commonwealth and state borders provisions for integrated management between government bodies is essential. It is the responsibility of the federal government to monitor the exposure of migratory cetaceans to potential threatening human activities. As these animals cross boundaries, bilateral agreements between government bodies are crucial in providing effective levels of protection for these animals from both localized/regional and cumulative impacts (i.e. where repetitive exposure from activities along the coast could cause harm to the animals). The federal government must take the lead and provide resources for the evaluation and monitoring of nationally significant environmental issues concerning cetacean species.

- **Whale Watching**
Cetacean watching is a growing and valuable industry in Australian waters. The industry is based on both locally resident (i.e. animals that move within a discrete home range throughout the year) and migratory species. There is now scientific evidence that the cetacean watching industry can have a severely detrimental impact on individuals and populations of those very animals they rely on. The cumulative impact of persistent interactions with commercial and recreational activities within Australian waters can cause an increase in mortality of populations, reducing the reproductive success and viability of populations in some cases (Bejder et al. 2006; Lusseau et al. 2006). The cetacean watching industry is therefore a conservation issue that requires special attention by government bodies. However, without strong and effective management and cooperation between government bodies, the sustainability of a potentially valuable industry and the protection of ecologically significant animals will be compromised.

- The Australian National Guidelines for Whale and Dolphin Watching 2005 provide a 'national standard and help to inform governments to make consistent decisions when designing policy and legislation for whale and dolphin watching'. Improvement of the coordination between State, Territory and Federal governments concerning the management and regulation of the cetacean watching industry, is an essential component to ensure the protection of species that frequently move across state and international boundaries.
- Many of the recommendations outlined by the *Australian National Guidelines for Whale and Dolphin Watching 2005* have been integrated into Part 8 of the *EPBC Act*. However the *Australian National Guidelines for Whale and Dolphin Watching 2005* document does not state that the recommendations are legislated under the *EPBC Act* which leads to a misleading interpretation of how stringent these guidelines/regulations are.
- There are a number of key points outlined by the *Australian National Guidelines for Whale and Dolphin Watching* that have not been incorporated into the *EPBC Act*.
 - Definition of 'disturbance' or 'harassment' to cetaceans
 - The regulations do not outline the 'best practice' of cetacean watching operations and the facilitation of education and interpretation programs
 - Provision for increased protection for 'Animals of Special Interest'
- The regulations do not allow for migratory species that cross state, Federal and International borders.
- The penalties outlined under Section 8 - '50 penalty units' - are not stringent enough to deter potential re-offenders.
- It is imperative that consistency in the regulations concerning cetacean watching between State and Commonwealth waters is achieved. There is currently no strict enforcement in either state or Commonwealth waters to ensure cetacean watching operations are being undertaken in accordance with the guidelines. It is essential that the federal government provides sufficient resources to monitor and enforce the cetacean watching industry which is currently being left unchecked. These measures must be undertaken in order to promote ecologically sustainable development of this valuable industry.

Compliance & Enforcement

- The definition of *interfere* is non-specific. Clarification is also needed of what is meant by the terms 'harass', 'chase' and 'herd' in relation to cetaceans.
- Strong penalties are required to deter any 'interference' with a cetacean. The penalties currently in the Act are too lenient and do not discourage potential offenders (particularly if they are recreational boaters).
- Incorporation of all of the *Australian Whale and Dolphin Watching Guidelines* into the Act to make it a comprehensive legislative framework.
- We stress, again, the weakness of the current penalties for offenders that 'interfere', 'disturb' or 'harass' cetaceans in Australian waters.

- Ensure consistency in the cetacean watching regulations between State, Territory and Federal governments through bilateral agreements. There are currently some inconsistent guidelines between State and Federal waters and no agreements between the two bodies to provide a consistent approach to the management of cetacean watching in Australian waters. This would not only clarify the issue with commercial tour operators, but also recreational boaters. The presentation of a united front between State and Federal governments will help discourage potential offenders that may 'interfere' with the animals.
- It is essential that the Federal government provides sufficient resources to assess, monitor and enforce the environmental issues that concern the marine environment including cetaceans and the tourism industry. In recent years, the resources allocated by the Federal government for cetacean research and management have been very limited and restricted to funding selective projects that often do not produce useful or efficient results that aid in the conservation of these significant marine species. There has particularly been a lack of funding for research to assess national environmental issues concerning coastal cetaceans that are exposed to threats throughout the year. It is essential that the health status of these nationally significant populations of coastal cetaceans are monitored. Monitoring the health of cetacean populations not only provides insight into the health of the species being studied, but also the marine ecosystem they rely on.

Assessments & Approvals

- In accordance with the *EPBC Act*, each permit application and permit renewal must be advertised to provide an opportunity for registered persons and bodies. The Minister must ensure that these provisions are carried out as stated under the Act.
- '*Under the EPBC Act Activities in the Australian Whale Sanctuary that may impact on whales, dolphins and porpoises may require a permit*'. Whale watching activities are an activity that may impact on whales and there are currently no permit requirements for persons and businesses wanting to undertake commercial scale cetacean watching operations from both domestic and internationally owned and operated vessels. This is an essential provision that needs to be incorporated in to the Act. A registry of permitted persons should also be developed. Providing for a registry of permitted operations to undertake cetacean watching and research will aid in the monitoring and assessment of cumulative impacts caused by such activities for both coastal and migratory species (that includes migratory, threatened and vulnerable species). The development of such a registry will also require cooperation between State, Territory and Federal governments.
- A permit system for commercial scale cetacean watching operations also has consequences for providing for sustainable use of marine resources by the tourism industry. Provisions should be made under permit conditions for all cetacean watching operators to undertake a short course in the correct methods of vessel operation, cetacean biology and identification. This would not only improve the 'best practice' vessel operations when in close proximity to cetaceans (where

- certain vessel activities can cause higher levels of distress to the animals), but also enhance the quality of education programs provided.
- Provisions need to be made under the *EPBC Act* that provides a framework for assessing the effectiveness of regulations at regular intervals.
 - **Whale Strandings and Entanglement**
The Commonwealth government must take a more decisive position and leadership role in the provision of infrastructure and the development of national disentanglement and stranding protocols. Assessment of the status and effectiveness of conservation measures within the Australian Whale Sanctuary can be made from cetacean stranding and entanglement records.

There is currently a protocol national standard for the biological sampling of stranded cetaceans being developed (although this has been a very slow process and progress is not being made efficiently).

There is also a need the development of national standard protocol for stranding response. These protocols will provide valuable records that can assist in the assessment of the health and impacts of human activities on cetaceans, but only through the provision of consistent recording and cooperation being state and federal governments.

Summary

- Integrate all the *Australian Whale and Dolphin Watching Guidelines* into the Act to make into a legislative framework.
- Provide sufficient protection for coastal cetacean species from major environmental issues through the assessment and approvals process.
- Develop a better framework for consistency in the evaluation, planning, assessment and conservation issues concerning cetaceans between Federal, State and Territory governments.
- Develop a permit system and registry for commercial cetacean watching operations.
- Toughen the penalties for infringements to the Act.
- Provide sufficient resources to assess, monitor and enforce provisions of the *EPBC Act 1999*.

Literature Cited

- Bejder, L., Samuels, A., Whitehead, H., Gales, N., Mann, J., Connor, R. C., Heithaus, M. R., Watson-Capps, J. J., Flaherty, C., and Krutzen, M. (2006). "Decline in Relative Abundance of Bottlenose Dolphins Exposed to Long-Term Disturbance." *Conservation Biology*, 20(6), 1791-1798.
- Lusseau, D., Slooten, L., and Currey, R. (2006). "Unsustainable dolphin-watching tourism in Fiordland, New Zealand." *Tourism in Marine Environments*, 3(2), 173-178.