



New South Wales

Threatened Species Conservation Regulation 2002

under the

Threatened Species Conservation Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Threatened Species Conservation Act 1995*.

BOB DEBUS, M.P.,

Minister for the Environment

Explanatory note

The object of this Regulation is to provide for the protection of critical habitat, declared under the *Threatened Species Conservation Act 1995*, in particular the critical habitat of the Little Penguin population in North Sydney Harbour. The Regulation:

- (a) prohibits a person from allowing a companion animal to enter the critical habitat, except for an animal that is being used as an assistance animal by a person with a disability, and
- (b) prohibits a person from taking fish from the critical habitat between sunset and sunrise during the Little Penguin breeding season, and
- (c) prohibits a person from interfering with a burrow or nesting box in the critical habitat, and
- (d) prohibits a person from knowingly being within 5 metres of a Little Penguin while that penguin is on land in the critical habitat or from knowingly disturbing a Little Penguin in the critical habitat if the bird is moulting, and
- (e) permits an authorised officer to make one or more of the following directions if the officer is of the opinion that a person is contravening the Regulation or disturbing a Little Penguin's breeding or moulting activities, or is likely to do so:

2002 No 1012

Threatened Species Conservation Regulation 2002

Explanatory note

- (i) direct the person to cease a particular activity within the critical habitat,
- (ii) direct the person to leave the critical habitat, and
- (f) provides a number of defences to prosecution under the Regulation.

This Regulation is made under the *Threatened Species Conservation Act 1995*, including sections 51 and 150 (the general regulation-making power).

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	4
Part 2 Little Penguin critical habitat	
5 Definitions	5
6 Application of Part	5
7 Companion animals prohibited	5
8 Fishing	6
9 Interference with burrows or nests	6
10 Interference with penguins	7
11 Directions given by an authorised officer	7
12 Defences	7

2002 No 1012

Clause 1 Threatened Species Conservation Regulation 2002

Part 1 Preliminary

Threatened Species Conservation Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Threatened Species Conservation Regulation 2002*.

2 Commencement

This Regulation commences on 1 January 2003.

3 Definitions

In this Regulation:

authorised officer means:

- (a) an officer or employee of the National Parks and Wildlife Service, or
- (b) a person who is authorised by the Director-General to exercise the powers conferred on an authorised officer by this Regulation, or
- (c) a police officer.

the Act means the *Threatened Species Conservation Act 1995*.

4 Notes

The notes in the text of this Regulation do not form part of this Regulation.

Part 2 Little Penguin critical habitat

5 Definitions

In this Part:

Little Penguin breeding season means the period from 1 July in any year until 28 February in the following year (both dates inclusive).

Little Penguin critical habitat means the area of land declared to be the critical habitat of the endangered population of Little Penguin at North Sydney Harbour, as described in the notification published in the Gazette under section 47 of the Act (as amended from time to time under section 49 of the Act).

Little Penguin critical habitat area A means the area marked A on the Little Penguin critical habitat map.

Little Penguin critical habitat area B means the area marked B on the Little Penguin critical habitat map.

Little Penguin critical habitat map means the map showing the location of the Little Penguin critical habitat, as published in the Gazette under section 53 of the Act.

6 Application of Part

This Part does not have effect until the notification referred to in the definition of ***Little Penguin critical habitat***, and the Little Penguin critical habitat map, are published in the Gazette.

7 Companion animals prohibited

- (1) A person must not bring a companion animal into the Little Penguin critical habitat.

Maximum penalty: 50 penalty units.

- (2) If a companion animal is found in the Little Penguin critical habitat:
- (a) the owner of the companion animal, or
 - (b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the companion animal at that time, that other person,
- is guilty of an offence.

Maximum penalty: 50 penalty units.

2002 No 1012

Clause 7 Threatened Species Conservation Regulation 2002

Part 2 Little Penguin critical habitat

- (3) In any prosecution for an offence against this clause it is a defence if the defendant establishes that the relevant companion animal is an assistance animal that was being used by a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth).
- (4) In any prosecution of the owner of a companion animal for an offence against this clause it is a defence if the defendant establishes that:
- (a) another owner of the animal has been convicted of an offence arising out of the same circumstances, or
 - (b) the commission by another owner of the animal of an offence arising out of the same circumstances has been proved but a court has made an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence, or
 - (c) the offence could not have been avoided by any reasonable efforts on the defendant's part.

- (5) In this clause:

assistance animal means an animal referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth.

Note. That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

companion animal and **owner** of a companion animal have the same meaning as in the *Companion Animals Act 1998*.

8 Fishing

- (1) A person must not take or attempt to take fish from the Little Penguin critical habitat between sunset and sunrise during the Little Penguin breeding season.

Maximum penalty: 50 penalty units.

- (2) In this clause, **take** fish has the same meaning as in section 4 (1) of the *Fisheries Management Act 1994*.

9 Interference with burrows or nests

A person must not interfere with a burrow or nesting box in the Little Penguin critical habitat.

Maximum penalty: 50 penalty units.

Note. Section 118C of the *National Parks and Wildlife Act 1974* also provides that a person must not, by an act or an omission, do anything that causes damage to any critical habitat. The maximum penalty for a contravention is 2,000 penalty units or imprisonment for 2 years or both.

10 Interference with penguins

- (1) A person must not knowingly be within 5 metres of a Little Penguin while that penguin is on land in the Little Penguin critical habitat.
Maximum penalty: 50 penalty units.
- (2) A person must not knowingly disturb a Little Penguin in the Little Penguin critical habitat if the bird is moulting.
Maximum penalty: 50 penalty units.
- (3) In this clause, *disturb* a Little Penguin includes shining a light on the penguin.

11 Directions given by an authorised officer

- (1) If an authorised officer is of the opinion that a person is contravening this Regulation or disturbing a Little Penguin's breeding or moulting activities, or is likely to do so, the officer may make one or more of the following directions:
 - (a) direct the person to cease a particular activity within the Little Penguin critical habitat,
 - (b) direct the person to leave the Little Penguin critical habitat.
- (2) A person must not, without reasonable excuse, fail to comply with a direction given under subclause (1).
Maximum penalty: 50 penalty units.
- (3) A person is not guilty of an offence of failing or refusing to comply with a direction given under subclause (1) unless it is established that the authorised officer:
 - (a) warned the person that a failure or refusal to comply with the direction is an offence, and
 - (b) identified himself or herself as an authorised officer.

12 Defences

It is a defence to a prosecution for an offence against this Regulation if the defendant proves that the act constituting the offence:

2002 No 1012

Clause 12 Threatened Species Conservation Regulation 2002

Part 2 Little Penguin critical habitat

- (a) was authorised to be done, and was done in accordance with, a licence granted under the *National Parks and Wildlife Act 1974* or under Part 6 of the *Threatened Species Conservation Act 1995*, or
- (b) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or
- (c) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act, if the determining authority has complied with that Part, or
- (d) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (e) was carried out:
 - (i) by an officer or employee of the National Parks and Wildlife Service in the exercise of his or her functions as such an officer or employee, or
 - (ii) by an authorised officer in the exercise of his or her functions as such an officer, or
 - (iii) by an officer or employee of Manly Council, NSW Fisheries, the Waterways Authority or the Environment Protection Authority in the exercise of his or her monitoring or enforcement functions as such an officer or employee, or
 - (iv) with the consent of the Director-General given in the form of a licence, permit, approval or other form of written authorisation.

BY AUTHORITY