



**Regulation Review Committee  
Parliament of New South Wales**

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**Report on the  
Marine Parks Regulation 1999**

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**Report No 7/52  
April 2000**

This report was compiled using Microsoft Word 97  
and printed by Parliamentary Printing Services

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to all legal deposit libraries in Australia*

**New South Wales Parliamentary Library cataloguing-in-publication data:**

**New South Wales. Parliament. Regulation Review Committee.**

Report on the Marine Parks Regulation 1999 / Regulation Review Committee, Parliament of New South Wales.  
[Sydney, N.S.W.] :The Committee, 2000. – 1 v. (various pagings) ; 30 cm. (Report no. 7/52, April 2000)

Chair: P.R. Nagle.

ISBN 0 7310 2272 6

1. New South Wales. Marine Parks Regulation 1999.
2. Marine parks and reserves—New South Wales—Law and legislation.
- I. Title
- II. Nagle, P. R.
- III. Series: New South Wales. Parliament. Regulation Review Committee. Report ; 52/7

346.94046783 (DDC21)

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## **Regulation Review Committee**

### **Members:**

Mr P. R. Nagle, MP, Chairman  
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### **Secretariat:**

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Mr G. Hogg, Project Officer  
Mr D. Beattie, Clerk to the Committee  
Ms S. Dale, Assistant Committee Officer

## Functions of Regulation Review Committee

The Regulation Review Committee was established under the *Regulation Review Act 1987*. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

## Chairman's Foreword

This report sets out the Committee's consideration of the Marine Parks Regulation 1999. The regulation is cognate with the *Marine Parks Act 1997* and has the object of providing for the management and zoning of marine parks. The Committee noted that the Regulatory Impact Statement, RIS, for the regulation considers only three options: to do nothing, to remake the former Aquatic Reserve Regulations or to make the new regulation in its entirety. These three options are so general that they could apply to any regulation and preclude any meaningful assessment of realistic alternatives to the substantive provisions of the regulation. Other options could have been to permit a wider or more restricted range of activities in each of the zones in marine parks and to vary the level of protection.

The RIS lacked the data on which to base a proper assessment of the regulation and failed to identify relevant alternative options. The RIS concluded that the net benefit of the regulation to the New South Wales Community can only be known accurately when the zoning and operational plans of the individual parks have been put in place. This in effect delays the full assessment of the regulation indefinitely.

Many of the contentious issues raised in the public submissions on the RIS such as biodiversity management, the use of personal watercraft and the construction of marinas have been left for consideration in the zoning plans when they are made.

The Committee raised these concerns with the Minister and he advises that separate amending regulations will be made for each new zoning plan and that these will each be individually assessed. The Committee also noted that a recent article by Mr Tim Anderson, Marine Protection Officer of the National Parks Association, states that progress towards actual protection of marine parks is "glacial" and that proposals so far outlined in options papers and planning surveys for the parks make inadequate provision for "no take" sanctuary zones.

In order to ensure that an adequate assessment on each zone will take place within a reasonable time, the Committee recommends that the Minister carry out a regulatory impact statement and consultation program on each of the proposed regulations with respect to the zoning plans as they are made. In this way the assessment that should have been carried out for the present principal regulation will be achieved in respect of each of the amendments. It would not be sufficient for the Minister to merely carry out a Schedule 1 assessment as this does not assess the regulation in the detail required by Schedule 2 of the *Subordinate Legislation Act*, nor does it have a consultation program. The Committee also calls for a timetable to be published by the Minister setting out the dates for the assessment and consultation on the regulations for the respective zoning plans.



**Peter R. Nagle, MP**  
**Chairman**

**MARINE PARKS REGULATION 1999 PUBLISHED  
IN THE GOVERNMENT GAZETTE OF 26 FEBRUARY 1999**

The object of this Regulation is to make provision for the following matters under the *Marine Parks Act 1997*:

- (a) the management, protection and conservation of marine parks,
- (b) regulating and prohibiting the carrying out of certain activities in marine parks,
- (c) the classification of areas within marine parks for different uses by means of zoning plans.

Part 2 of the Regulation provides for four zones in marine parks (the sanctuary zone, the habitat protection zone, the general use zone and the special purpose zone), and sets out the objects of those zones and the special provisions applying in those zones. The sanctuary zone attracts the highest level of protection, and activities that result in harm to fish, animals or habitat are prohibited.

Schedule 1 to the Regulation is intended to contain the zoning plans for individual marine parks. However when the regulation was published the schedule contained no zoning plans. Zoning plans may contain more specific provisions relating to the use of marine parks, for example, a zoning plan might regulate methods of fishing or the use of vessels or vehicles in a particular marine park.

Part 3 of the Regulation prohibits certain activities in marine parks except with the consent of the Marine Parks Authority. These activities include damaging moorings and other facilities in a marine park, bringing exotic animals or plants into a marine park, organising or conducting sporting and recreational activities in a marine park and camping in a marine park.

Part 3 also enables the Authority to prohibit, on a temporary basis, the carrying out of certain activities in a marine park by means of a notification published in the Gazette (this will be known as a marine park closure).

*It is the Government's intention that a zoning plan will be prepared for Jervis Bay within two years of its declaration. With regard to the Solitary Islands, the existing zoning arrangements and management controls will be retained for a period of two years while a review of those arrangements is undertaken through an extensive community consultation program.*

Previously it was only possible to declare aquatic reserves (under Fisheries legislation) or national parks or nature reserves (under National Parks and Wildlife legislation). Neither of these types of protected areas was able to protect all marine life. The move from aquatic reserve to marine park is said to enable all flora and fauna within the park, including fish, whales, seabirds and marine vegetation, to be protected.

Two marine parks have been declared, so far, one at Solitary Islands, near Coffs Harbour, and the other at Jervis Bay. The next step is the development of zoning and operational plans for these parks.

## **ENABLING PROVISIONS**

The enabling provisions in the Act under which these regulations are made, Section 15, 16 and 17, are complex. They provide as follows:

### ***Section 15:***

#### ***Regulations relating to marine parks generally***

*The regulations may make provision for or with respect to the management, protection and conservation of marine parks.*

### ***Section 16:***

#### ***Regulations relating to zoning plans for marine parks***

- (1) Without affecting the generality of section 15, the regulations may make provision for or with respect to classifying areas within a marine park for different uses (for example, sanctuary areas, habitat areas and general use areas) by means of zoning plans set out in the regulations.*
- (2) The relevant Ministers are to cause public notice to be given of proposed regulations under this section containing a zoning plan for a marine park.*



*The notice is:*

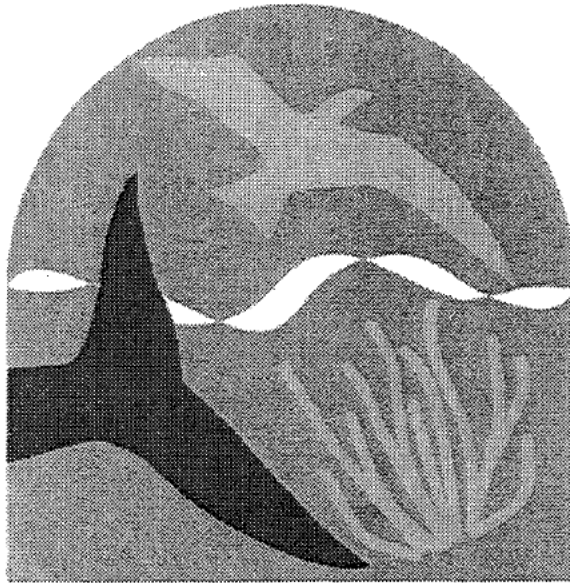
- (a) to specify the address of each place at which copies of the proposed regulations may be inspected, and*
  - (b) to invite submissions to be made on the proposed regulations within the period specified in the notice (being a period of not less than 3 months after the date of the notice)*
  - (c) to specify the address to which such submissions are to be forwarded.*
- (4) Copies of the proposed regulations must be displayed at such places frequented by the public as the relevant Ministers consider will bring the proposed regulations to the attention of interested persons.*
- (5) Before taking any further action with respect to the proposed regulations, the relevant Ministers are to consider:*
- (a) any submissions made within the period specified for that purpose in the notice, and*
  - (b) any comments from the Authority, the Advisory Council and any relevant advisory committee made within such time as the relevant Ministers allow.*
- (6) Subsections (2)-(5) apply to any proposed regulations that amend a zoning plan for a marine park, unless:*
- (a) the relevant Ministers are of the opinion that the amendment is of a minor nature, and*
  - (b) the relevant Ministers have consulted with the advisory committee for the marine park about the proposed amendment.*

# **APPENDIX 1**

**Regulatory Impact Statement**

**for**

***Marine Parks Regulation 1999***



# **Marine Parks Authority**

**REGULATORY IMPACT STATEMENT  
FOR THE MARINE PARKS ACT  
REGULATION**

**September 1998**

**Regulatory Impact Statement  
for the Marine Parks Act  
Regulation**

Prepared for the Marine Park Authority Ministers

**The Hon. Pam Allan**  
Minister for the Environment

and

**The Hon. Bob Martin**  
Minister for Mineral Resources  
and Minister for Fisheries

September 1998

This Regulatory Impact Statement has been prepared for the Marine Parks Authority as a requirement under Section 5 of the Subordinate Legislation Act 1989.

**ACIL Consulting Pty Ltd** was contracted by the NSW National and Wildlife Service on behalf of the Marine Park Authority to prepare the Regulatory Impact Statement. The Marine Park Authority acknowledges the significant contribution to the Regulatory Impact Statement made by **ACIL Consulting**.

The report also includes contributions from NSW Fisheries and NSW National Parks and Wildlife Service.

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## Executive summary

*This RIS identifies impacts of the Marine Parks Regulation at a generic level*

The Marine Parks Act came into being in 1997 and there are two marine parks which have been declared to date: Solitary Islands Marine Park (SIMP) and Jervis Bay Marine Park (JBMP). The Marine Parks Act provides for regulations to be prepared as a means of enabling the management, protection and conservation of marine parks. The Regulation for the Act is currently in draft form.

The Subordinate Legislation Act 1989 requires that a Regulatory Impact Statement be prepared for regulations such as these.

This document presents a Regulatory Impact Statement (RIS) for the Marine Parks Regulation.

The Marine Parks Regulation makes regulations that are generic for all marine parks. The level of analysis reflects this, being confined to identification of, and broad indicative assessment of, the cost and benefit impacts for two broad areas:

- Zoning descriptions (generic) – describing the objectives of each zone and the activities that may be permitted in each zone type.
- General management provisions, describing tools to manage the way activities are undertaken within the parks, to meet the objectives of the Act.

With the Marine Parks Act already in place, the existing situation is characterised by two options depending on the type of area under consideration. These options are compared against the proposed new regulation. The options are:

- **Option 1:** the Marine Parks Act with no specific regulations
- **Option 2:** the Marine Parks Act with regulation based on the Aquatic Reserve regulations (as previously used under the Fisheries Management Act)
- **Option 3:** the Marine Parks Act with the proposed regulations.

Comparing the draft regulations against the situation prior to the implementation of the Act is considered outside the scope of this RIS.

*Focus on ecological processes and biodiversity is a key component of the proposed regulation*

The key feature of the Marine Parks Act and draft Regulation as compared to the existing situation is the central focus on the ecological processes and biodiversity outcomes. Legislation such as the Fisheries Management Act / Regulations (General and Aquatic Reserves) and the National Parks and Wildlife Act / Regulations touch upon aspects of marine biodiversity conservation but these legislative mechanisms do not have those matters as a central focus.

More effective management of activities in the marine park areas is the key strategy to specifically achieve the key objectives of conserving marine biological diversity and maintaining ecological processes. Whilst this involves some consolidation of existing regulatory activities undertaken by the National Parks and Wildlife Service (NPWS) and NSW Fisheries, it is not expected that there will be significant efficiency gains; rather, better control of activities to achieve the desired outcomes.

### Impact identification and evaluation

The following potential impacts have been identified in the analysis:

- Administration costs
- Operator compliance costs
- Productivity (output) impacts
  - Commercial Fisheries
  - Recreational marine users
  - Commercial tourism
  - Land development impacts
  - Scientific research
- Cultural impacts
- Ecological benefits - Habitat preservation and sustainable use of resources.

At the broad level, the actual change in focus consequent on the new regulation may not result in a dramatic change in the activities undertaken, but the more effective control of activities is designed to bring about an improvement (or stabilisation relative to the base case which could show deterioration) in broadly based ecological / environmental outcomes.

Full evaluation of the net benefit from a community perspective can only be done on a case by case basis, once the regulations are implemented in the form of zone plans for each park. At this stage of analysis only administration costs have been valued in monetary terms.

The following table summarises the comparative information which has been considered in this report.

*More effective management of ecological objectives and activities is a key change*

There are three key changes consequent on implementation of the Marine Parks Regulation:

- the specific focus on, and holistic management of, the ecological and biodiversity outcomes
- the expected increased effectiveness of using resources to control activities in order to achieve these outcomes
- the consistency of the regulatory approach being undertaken with international guidelines and accepted practices for marine park areas.

The impact summary table shows the data availability constraints; the dependence of the impacts on specific regulations and zone plans for Options 2 and 3; the impacts as a cost, or a benefit, or zero, or potentially a combination of these (shown as *C/B*); and the broad indicator of ability to manage the impact (shown as *Manage*).



**Impacts of MPA Regulation**

<b>Impact</b>	<b>Option 1 MPA with no Regulation</b>	<b>Option 2 MPA with aquatic reserve style Regulation</b>	<b>Option 3 MPA + Regulation</b>
<b><u>Regulatory costs</u></b>			
Administration costs <i>C/B</i>	\$1.4 million p.a. <i>Cost</i>	\$2.2 million p.a. <i>Cost</i>	\$2.2 million p.a. <i>Cost</i>
Compliance costs <i>C/B</i>	Insufficient data <i>Zero or Cost</i>	Costs incurred <i>Cost</i>	Costs incurred <i>Cost</i>
<b><u>Activity impacts</u></b>			
Commercial Fisheries <i>C/B</i> <i>Manage</i>	Insufficient data <i>Unknown</i> <i>Limited</i>	FMA/Zones <i>Zero or Cost</i> <i>Potential long - term benefit</i> <i>Effective</i>	MPA / Zone plans <i>Zero or Cost</i> <i>Potential long-term</i> <i>benefit</i> <i>Effective</i>
Recreation and tourism <i>C/B</i> <i>Manage</i>	Insufficient data <i>Benefit or Cost</i> <i>None</i>	Diversion of activities <i>Benefit or cost</i> <i>Limited</i>	Diversion of activities <i>Benefit or cost</i> <i>Effective</i>
Other commercial <i>C/B</i> <i>Manage</i>	Insufficient data <i>Benefit or Cost</i> <i>None or limited</i>	FMA/Zones <i>Benefit or Cost</i> <i>Limited</i>	MPA /Zone plans <i>Benefit or Cost</i> <i>Effective</i>
Land development impacts <i>C/B</i> <i>Manage</i>	Insufficient data <i>Zero or cost</i> <i>Very limited</i>	Site specific impacts <i>Zero or cost</i> <i>Very limited</i>	Site specific impacts <i>Zero or cost</i> <i>Limited</i>
Scientific Research <i>C/B</i> <i>Manage</i>	Insufficient data <i>Zero or benefit</i> <i>Limited</i>	FMA / Zones <i>Benefit</i> <i>Limited</i>	MPA / Zone plans <i>Benefit</i> <i>Effective</i>
<b><u>Cultural impacts</u></b>			
<i>C/B</i>	Insufficient data <i>Zero or benefit</i>	Protected <i>Benefit</i>	Protected <i>Benefit</i>
Ecological sustainability Biological diversity Habitat protection <i>C/B</i>	Insufficient data <i>Zero or benefit</i>	FMA / Zones <i>Benefit</i>	MPA / Zone plans <i>Benefit</i>

In terms of the ability to manage activities in the parks the key results are:

- **Option 1 v. Option 3.** There is a broad range of activities which currently are not effectively managed in marine parks where aquatic reserve style regulations do not apply. The proposed regulation will enable effective management of these activities.
- **Option 2 v. Option 3:** For marine parks which are currently managed under the aquatic reserve regulations, the ability to manage a number of activities is currently more limited than will be the case with the proposed regulation.

*Detailed Park specific data is required to determine community net benefit*

Evaluation of the key impacts - ecological outcomes and productivity impacts in the key sectors - will require a range of specific data and stakeholder input for the parks in question and would require the zoning and management plans of the parks to be developed and known.

In conclusion:

- The few studies that have been carried out indicate that marine parks are likely to have a high benefit - cost ratio and are general economically beneficial when direct and indirect costs and benefits are considered.
- The key changes implicit in the new regulation may refer less to the actual activities which can be undertaken and more to the a change of focus towards ecological processes and biodiversity maintenance. This will be achieved through a more holistic management approach and the more effective co-ordination of management practices in the parks.
- The significance of, and assessment of impacts will be dependent on the application of specific zone plans at the marine park level.

## 1. Introduction and background

### 1.1 Introduction

*The RIS relates only to the generic components of the Marine Parks Act Regulation*

The Marine Parks Act (MPA) was implemented in 1997 and a Regulation for the Act is now proposed. In accordance with the *Subordinate Legislation Act 1989*, the purpose of this assignment, as stated in the brief to the consultants, is to provide a Regulatory Impact statement (RIS) for the proposed draft Regulation for the Marine Parks Act 1997. The draft Regulation covers two key areas of the Act, which apply to all marine parks (rather than to details specific to individual marine parks). The two key areas are:

- Zoning descriptions (generic) – describing the objectives of the each zone and the activities that may be permitted in each zone type.
- General management provisions, describing tools to manage the way activities are undertaken within the parks, to meet the objectives of the Act.

Note: Schedule One to the draft Regulation has not been prepared as this applies to individual marine parks only, providing the mechanism for the adoption of the zoning plans and any other specific rules. The zone plans for existing marine parks will be developed over a two year consultation period and are not considered in this document.

As with all regulatory impact statements, the regulation in question cannot be completely separated from the provisions of the Act it supports. To focus the analysis on the impacts of the regulation, rather than the Act, we have defined the base case not as the situation which existed prior to the implementation of the Act, but the current situation where the Act is in place and management of activities is through other regulations (see Section 1.3).

#### **Marine parks**

*Marine parks can provide for a range of uses*

To date, two marine parks have been declared under the Marine Parks Act - Solitary Islands Marine Park (near Coffs Harbour) and Jervis Bay Marine Park (near Nowra). It is anticipated that more marine areas may be investigated for declaration as marine parks in the future. The Solitary Islands Marine Park is continues to be managed under the old aquatic reserve Regulations (under the Fisheries Management Act).

The two declared marine parks are designed to provide for the conservation of marine biodiversity and for ecological sustainable use. Marine parks are therefore likely to be multiple use parks. Management of multi-use marine parks needs to acknowledge competing interests and a range of values the community places on the parks. Two broad classes of value are:

- Nature Conservation Values — values concerned with protection of the ecological integrity of the park. These values might reasonably include the ‘existence’ value of the park itself and the species it contains, and aesthetic values.

- Use Values — values which include commercial and recreational fishing, aquaculture, boating, diving, other tourist and recreational activities, and the value to scientific research.

This regulatory impact statement considers these values and potential trade-offs in its analysis of the broad impacts.

### Report outline

The rest of this section provides information on the draft Regulation and the existing situation. Section 2 describes the limited range of options which have been compared. The impacts are identified and issues for impact quantification are provided in Section 3. Section 4 provides the impact statement for the generic regulations. Section 5 provides an outline of the public consultation strategy for the draft Regulations.

## 1.2 The Marine Parks Act and Regulation

### Objectives

The Marine Park Act 1997 (the Act) was established with two main purposes:

- to provide for the declaration of marine parks in NSW
- to regulate the activities in marine parks.

The objectives of the Marine Park Act 1997 are to:

- conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks
- maintain ecological processes in marine park,

and where consistent with these objectives, the parks are to provide for:

- ecologically sustainable use of fish
- ecologically sustainable use of marine vegetation
- opportunities for public appreciation, understanding and enjoyment of parks.

### Key focus

The key focus of the Act and the Regulation are on biodiversity conservation and ecologically sustainable use of the marine park. Section 4 of the Act defines these as follows:

**biological diversity** - the diversity of life as made up by the three components

- a) the variety of genes (genetic diversity)
- b) the variety of species (species diversity)
- c) the variety of ecosystems.

*Maintaining ecological processes and conserving biodiversity are the key objectives*

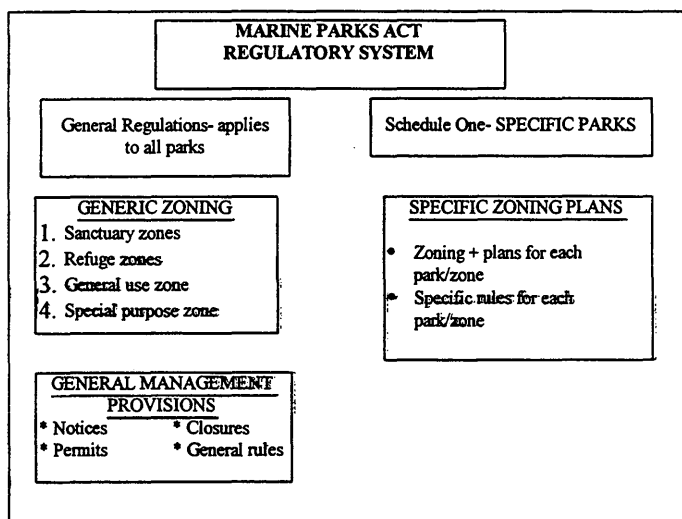
**ecologically sustainable use** of a marine park means the taking of plants, animals or materials from the park according to the principles laid down in the *Protection of the Environment Act 1991*, which are:

- the precautionary principle, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- inter-generational equity, namely that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- conservation of biological diversity and ecological integrity
- improved valuation and pricing of environmental resources.

**Regulation of activities**

A schematic representation of how the regulation is expected to operate is shown in the diagram below.

STAGE



*Zones and management tools are to be applied to manage activities*

For the general Regulation, the control of activities in the marine parks is to be effected by two management tools:

- Generic zoning
- General management provisions.

*Generic zoning*

Zoning schemes are important to give specific protection regimes within the parks. Zoning is subject to a number of factors that need to be taken into consideration, including:

- specific physical and biological characteristics of the area
- information on user activities and resource use (socio-economic)

- information on potential conflicts between users in what are usually multi-use areas
- information on environmental and ecological impacts of different uses<sup>1</sup>
- identifiable and enforceable boundaries

Under the Marine Parks Regulation, four generic zones are proposed to cater for the outcomes required under the objectives of the Act. These zones may be applied to all marine parks in NSW.

Generic zoning descriptions will:

- achieve consistency in implementing the regulation of activities
- achieve parity between parks in the levels of biodiversity conservation, habitat protection and ecological sustainable use.

The four generic zone types are Sanctuary, Refuge, General Use and Special Purpose. For full details reference should be made to the draft Regulation.

#### *General management provisions*

The general intention of the Regulation is to direct or influence the activities undertaken in the park, including recreational, commercial, educational or scientific activities, through the use of consent requirements, marine park closures and general rules.

These instruments will be used to manage the following, if required:

- introduction of non-indigenous biota
- entry into a zone
- to regulate the level of activity, effort and impact (at a point in time or over time)
- the length of time spent in a zone
- boat operations (type and speed)
- reporting from people using the park.

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<sup>1</sup> Gubbay S et al, *Marine protected areas: Principles and techniques for management (1995)*

*The Marine Park Authority is to administer the Act*

### **Administration of the Act and Regulations**

The Act and its Regulation are administered by the Marine Parks Authority (the Authority) which has been established under the Act. The Authority comprises the CEOs of the NSW Premiers Department, NSW Fisheries and NPWS and relies on the administrative support and staffing resources from both the NPWS and NSW Fisheries only, and seconds other public entities as arranged.

Under the Act, a Marine Parks Advisory Council (MPAC) has been established that includes:

- one member to represent the Commonwealth Government
- two members to represent the interests of marine conservation, at least one being an expert in marine conservation
- one member with expertise in marine science
- one member to represent the interests of Aboriginal people
- one member to represent the interests of the tourism industry
- one member to represent the interests of commercial fishers
- one member to represent the interests of recreational fishers
- one member to represent the interests of scuba divers.

In addition, local Marine Park Advisory Committees have been established for individual marine parks to advise the Authority on the management of the relevant marine park.

### **Integration with other legislation**

The Marine Parks Act and Regulation will operate in conjunction with the provisions of a number of other NSW Acts and Regulations including:

- Fisheries Management Act 1994
- National Parks and Wildlife Act 1974
- Threatened Species Conservation Act 1995
- Environmental Offences and Penalties Act 1997
- Coastal Protection Act 1979
- Environmental Planning and Assessment Act 1979
- Native Title (NSW) Act 1994.

Within marine parks, the Marine Parks Act and Regulation takes precedence for management purposes. For example, an operations plan under the Marine Parks Act takes precedence over a plan of management for a national park under the National Parks and Wildlife Act or an aquatic reserve under the Fisheries Management Act. Within marine parks, the Marine Parks Act and Regulation also replace some provisions of other regulations - such as the Fisheries Management (Aquatic Reserves) Regulation 1995.

However, to optimise management outcomes the Marine Parks Authority seeks to integrate, where possible, the above legislation, so that regulations under these Acts can be implemented in marine parks in a coordinated manner.

One such example is a proposal to seek delegation under the Environmental Offences and Penalties Act for Schedule 2 infringement notices for pollution of waters and littering. Accordingly, no additional powers under the Marine Parks Regulation will be created for this purpose.

### 1.3 The current situation

*The base case is characterised by two broad area types and prevailing conditions*

The existing situation needs to be defined so that the proposed Regulation can be compared against it in order to determine the net incremental impacts associated with the new Regulation.

The current situation is defined by two groups of areas:

- those which were previously aquatic reserves, (or similarly controlled waters), and were managed under the aquatic reserves Regulation, as specified by the Fisheries Management Act (Aquatic Reserves). The Solitary Islands Marine Park (SIMP), currently falls into this category, as the aquatic reserve Regulation still applies to the park.
- other areas, which are not currently specified as such aquatic reserves. The Jervis Bay Marine Park falls into this category.

The current control of activities and, therefore, the level of ecological/bio-diversity protection in these two groups of areas are different. Hence we have a base case at the general level which comprises two different sets of prevailing conditions. Options for comparison have been chosen to reflect this (Section 2).

#### **Aquatic Reserve management and regulatory control**

The key regulatory control of aquatic reserves is provided by the Fisheries Management (Aquatic Reserves) Regulation 1995.

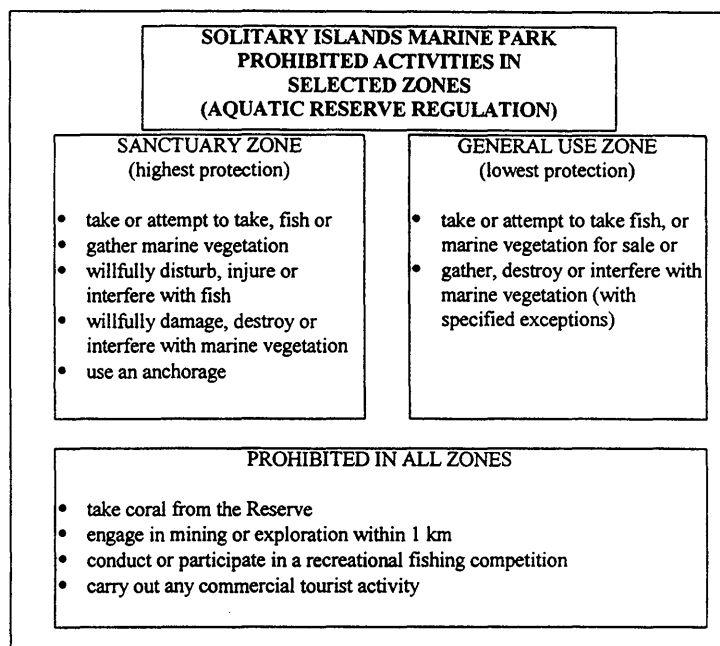
At a general level, this regulation has elements similar to that of the draft Marine Parks Regulation in terms of defining generic zones for each reserve

In the case of the existing Solitary Islands Marine Park there are four zones categories that currently apply to the park under these regulations: Sanctuary, Refuge, Recreation and General Use.

The regulation prescribes **prohibited activities** for each type of zone. Exemptions and specified lists are used to prescribe the allowable activities precisely. The zones are hierarchical in nature. The prohibited activities for the least protected zone (General Use) and most protected zone (Sanctuary) for Solitary Islands are given as examples in the following diagram.

It should be noted that under these regulations that, apart from mining, all prohibited activities can be permitted, subject to approval (permit) by the Authority. There is currently no fee or charges associated with this consent.





### **Marine Parks not subject to aquatic reserve regulations**

Marine Park areas which are not subject to existing aquatic reserve regulation currently have limited regulatory controls, in regard to environmental protection and activities which may impact on flora and fauna. Control of activities which may impact on ecological processes and biodiversity in such areas is therefore reliant on the combination of a range of Acts and Regulations, which have a range of differing objectives. The two primary regulatory controls are those currently administered by NSW Fisheries and the NPWS.

### **Fisheries Management Act 1994**

The objects of the Fisheries Management Act and Regulation are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

In particular, the objects of this Act include:

- (a) to conserve fish stocks and key fish habitats, and
- (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
- (c) to promote ecologically sustainable development, including the conservation of biological diversity,

and, consistently with those objects:

- (d) to promote viable commercial fishing and aquaculture industries,
- (e) to promote quality recreational fishing opportunities, and
- (f) to appropriately share fisheries resources between the users of those resources.

The Fisheries Management Act (FMA) and Regulation are geared to setting allowable catch limits, fishing practices and fishing areas for sustainable fisheries management. This can provide, indirectly, beneficial impacts on marine habitats where such limits are set with this as one of the determining factors.

The relevant specific provisions relate to the use of fishing closures ie. “the prohibition, absolutely or conditionally, of the taking of fish, or of a specified class of fish, from any waters or from specified waters”.

A fishing closure:

- relates to fishing activities only as defined by the Act (not to fish habitat)
- can remain in force for a period not exceeding 5 years
- if contravened, carries relatively high penalties for the offender.

In addition the FMA does have provisions regarding threatened species and habitat conservation:

- Habitat and marine vegetation protection plans (Part 7)
- Threatened species listing and critical habitat protection (Part 7A).

#### **National Parks and Wildlife Act 1974**

The National Parks and Wildlife (NPW) Act provides for the creation of a range of protected areas, such as national parks, historic sites and nature reserves, which can include marine and estuarine areas.

Under the NPW Act ‘animal’ is defined as any animal, whether vertebrate or invertebrate, and at whatever stage of development, but does not include fish within the meaning of the Fisheries Management Act. This means that all reptiles, birds and mammals are included under the NPW Act regardless of whether they inhabit terrestrial or marine areas. Part 7A of the NPW Act makes special provisions for the protection of marine mammals (such as whales).

The NPW Act provides for the protection of native plants.

The NPW Act protects Aboriginal heritage throughout NSW, including places of significance to Aboriginal people. The Act also provides for the protection of historic places within protected areas.

#### **Threatened Species Conservation Act 1995**

The objectives of the Threatened Species Conservation (TSC) Act are

- (a) to conserve biological diversity and promote ecologically sustainable development
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities

- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving cooperative management

The TSC Act applies to indigenous animal life in NSW but does not include fish or marine vegetation (as defined under the Fisheries Management Act) or humans.

## 1.4 Scope of evaluation

*The scope of the RIS is restricted*

The scope of this Regulatory Impact Statement is restricted in a number of areas:

- It is limited to an assessment of the generic management provisions and zones to be used across the state. Local issues and variations for each particular marine park will be considered in specific zone plans developed for each particular park and are not included in this assessment.
- Potential impacts are identified and assessed at the broad level. Detailed information relating to impacts in each park to quantify the impacts can only be determined when specific zone plans are implemented for each marine park.
- Fees are not included in this analysis.
- Proposed penalties are considered to relation to existing legislation. The maximum penalty for an offence under the draft Marine Parks Regulation is 100 units.

## 2. Options assessed and compared

### 2.1 Options

*Three options are compared in the RIS*

To compare the impacts of the proposed regulation with the existing situation we have used three options, which are:

- **Option 1:** the Marine Parks Act with no specific regulations
- **Option 2:** the Marine Parks Act with regulation based on the Aquatic Reserve regulations (as previously used under the Fisheries Management Act)
- **Option 3:** the Marine Parks Act with the proposed draft regulations.

As already described, the existing situation is a combination of Option 1 and Option 2, depending on the area under analysis. The specification of the three options allows analysis of the impacts of the proposed regulation compared to the two different regulatory environments which exist currently.

### 2.2 The proposed draft regulation compared to existing situation

*The key legislative change is the focus on ecological and biodiversity outcomes*

To assess the generic impacts of the Marine Parks Regulation, as is the purpose of this RIS, the proposed Regulation has to be compared against the continuation of the existing situation (ie. the base case). The key differences can be divided into three categories. Differences resulting from:

- the change in regulatory approach at a generic level
- specific differences in the regulations compared to marine parks managed under the Fisheries Management (aquatic reserve) Regulations (eg. Solitary Islands Marine Park)
- specific differences in the regulations compared to marine parks areas which are not managed under the Fisheries Management (aquatic reserve) Regulations (eg. Jervis Bay).

#### Generic regulatory approach differences

*Outcome objectives are combined with activity controls in the Regulations*

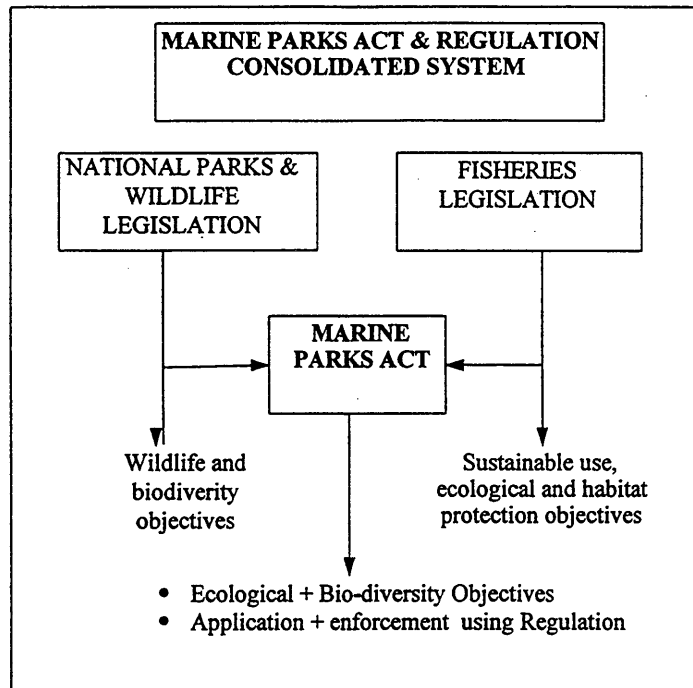
There has been a general trend in recent years in moving from prescriptive command and control regulation to less prescriptive regulation which focuses on the achievement of the objectives. It is argued that “focussing on prescribing the outcome to be achieved under the regulation rather than the means by which it is to be achieved is likely to be a more effective approach”<sup>2</sup>. This allows innovation in methods to achieve the outcomes to occur.

For the Marine Parks Regulation this general trend is reflected, although it is probably best described as a composite approach, ie. outcome objectives are set but in combination with specification of allowable and prohibited activities within the zones.

<sup>2</sup> Regulatory Review Unit, Cabinet Office NSW, *From Red tape to results. Government regulation: a guide to best practice*, (1995)

More specifically the new Regulation:

- provides an overriding focus on the outcome objectives of ecological sustainability and biodiversity conservation which is not apparent under the existing system.
- implies the combination of relevant resources from the two key agencies (NPWS and NSW Fisheries) to produce more effective management of the marine resources in achieving the stated outcomes as shown in the following diagram.



*Activities in aquatic reserves may not change significantly*

### **Specific changes for marine parks**

In broad terms the new Regulation does not greatly alter the conditions in existing marine parks operating under aquatic reserve regulations. The exact nature of changes within particular areas within the marine park will be determined by the zoning plan implemented.

The generic zoning system proposed in the Marine Parks Regulation is output-driven in terms of ecological and biodiversity objectives but also relies on the prescription of the type of activities which are allowed (with or without consent) or which are prohibited in the respective zones. Broadly, the Marine Parks Regulation, compared to the Fisheries Management (Aquatic Reserves) Regulation:

- removes the high degree of discretionary power, vested with the Minister, and Director of Fisheries, which has to be exercised to allow any prohibited activities in aquatic reserves zones (such as commercial fishing).
- defines the zoning areas more specifically to protect biodiversity and ecological processes while managing activity impacts.

The ability to manage activities under the different options being assessed is shown in Table 1.

This list of activities is not all encompassing and these examples have only been selected to illustrate comparisons. The following abbreviations have been used:

- N = No management tools
- VL = Very limited management tools
- L = Limited management tools
- Y = Yes, effective management tools

**Table 1: Comparison of ability to manage activities across options**

Activity	Option 1 MPA with no Regulation	Option 2 MPA with Aquatic Reserve Regulation	Option 3 MPA + Regulation
<b>Commercial</b>			
• Mining	Y - Prohibited	Y - Prohibited	Y - Prohibited
• Fishing	L - FMA	Y - FMA, zones	Y - Zone, closure & FMA
• Aquaculture	L - FMA	L - FMA, zone	Y - Zone, permit & FMA
• Whale watching	VL - NPWA	L - restricting access only	Y - Closure, permit
• Charter Fishing	VL - FMA	L - restricting access only	Y - Closure, zone, permit
• Scuba	N	L - restricting access only	Y - Closure, permit
• Other	N	L - restricting access only	Y - Closure, permit
<b>Recreational</b>			
• Fishing	N	L - zones	Y - Closure, zone
• Skiing / jet ski	N	N	Y - Closure, zone,
• Scuba	N	N	Y - Closure
• Boating	N	VL - anchoring restrictions only	Y - Closure,
• Competition	N	L - zone, permit	Y - Closure, zone, permit
• General use	N	N	Y - Closure
<b>Other</b>			
• Research	L - FMA, NPWA	L - NPWS, FMA	Y - Permit, zone
• Education	N	VL - Zone	Y - Zone, closure
• Polluting*	Y	Y	Y
• Waste dumping*	Y	Y	Y
• Introduction exotics	L - FMA	L - FMA	Y
• EP&A Part 5 develop	VL	VL	L - Zone
• EP&A Part 4	VL	VL	L - Zone

FMA = Fisheries Management Act 1994 NPWA = National Parks and Wildlife Act 1967

EP&A = Environment Environmental Planning and Assessment Act 1979

\* = proposed delegation under Environmental Offences and Penalties Act



The table shows the effectiveness of management practices that is implicit in the coordination under a single Authority using a single Act and Regulation, rather than relying on the regulations administered by other agencies.

The key differences identified in Table 1 are:

- **Option 1 v. Option 3.** There is a broad range of activities which currently are not effectively managed in marine parks where aquatic reserve regulations do not apply. The proposed Regulation will enable effective management of these activities
- **Option 2 v. Option 3:** For marine parks which are currently managed under the aquatic reserve regulations, the ability to manage a number of activities is currently more limited that will be the case with more specific use of zones, closures and permits under the proposed Regulation.

There is management improvement between Options 2 and 3 for activities such as commercial whale watching, charter fishing, recreational jet ski use, recreational scuba diving

*More effective management is the key change expected*

Overall, it can be concluded that the changes in activities consequent on the new Regulation may not be dramatic, given the existing regulations which apply in certain areas. The impacts are certainly potentially more significant to marine parks that are not currently managed under aquatic reserve regulation, compared with the impacts where aquatic reserves regulations apply.

The key changes implicit in the new Regulation therefore may refer less to the actual activities which can be undertaken and more to:

- a change of focus towards ecological processes and biodiversity maintenance
- more effective co-ordination and consolidation of management practices.

### 3. Costs and benefit impacts

*Potential impacts are identified and evaluation issues discussed*

This section of the report identifies the impacts which could potentially arise as a result of the implementation of the Marine Parks Regulation under Option 3. At the generic level, the scale of impacts will depend on the specific marine park in question and whether it is currently characterised by Option 1 (no regulations) or Option 2 (managed under aquatic reserves regulation).

Relevant issues are raised in regard to the evaluation of these impacts, which can only occur once locality specific zone plans are prepared.

Table 2 summarises the impacts we have identified.

**Table 2: Impacts identified.**

<b>Impact</b>
<b>Regulatory costs</b>
Administration costs
Compliance costs (and penalties)
<b>Output (productivity) impacts</b>
Commercial Fisheries
Recreational marine users
Commercial tourism
Land development
Scientific Research
<b>Cultural impacts</b>
<b>Ecological impacts</b>
Ecological sustainability
Biological diversity
Habitat protection

The impacts are now considered in turn.

### 3.1 Costs of administering the Act / regulations

*The incremental cost of administering the regulation for two parks is estimated at \$0.8 million per annum*

Indicative costing for the operation of the Marine Park Authority and implementation of the Act and Regulation have been provided by the NPWS and NSW Fisheries. These are based on preliminary budgets and include administration and enforcement at intended levels for successful operation of the regulation. It should be noted that these costs included the administration of the Act and the Regulation, under the different options, allowing calculation of the incremental cost of the regulation. [A comparison with administration costs prior to the implementation of the Act is not provided, as the existing situation has the Act already in place].

**Table 3: Indicative annual costs for Marine Parks Act and Regulation options**

	Option 1 MPA with no Regulation	Option 2 MPA with Aquatic Reserve Regulation	Option 3 MPA + Regulation
<b>Marine Park Authority</b>			
• Jervis Bay	\$328,800	\$400,000	\$400,000
• Solitary Islands	\$452,600	\$525,000	\$525,000
• Corporate	\$75,000	\$75,000	\$75,000
Sub Total	\$856,400	\$1,000,000	\$1,000,000
<b>National Parks and Wildlife Service</b>			
• Jervis Bay	\$34,100	\$136,300	\$136,300
• Solitary Islands	\$34,100	\$128,300	\$128,300
• Corporate	\$117,500	\$400,100	\$400,100
Sub Total	\$185,700	\$664,700	\$664,700
<b>NSW Fisheries</b>			
• Jervis Bay	\$57,000	\$72,000	\$72,000
• Solitary Islands	\$73,000	\$120,000	\$120,000
• Corporate	\$240,000	\$355,000	\$355,000
Sub Total	\$370,000	\$547,000	\$547,000
<b>Total</b>	<b>\$1,412,500</b>	<b>\$2,211,700</b>	<b>\$2,211,700</b>

Source: NPWS and NSW Fisheries

These costs do not include initial set-up costs or capital works.

The cost of implementing the Act and Regulation under Options 2 and 3 is the same and estimated at \$2.211 million per annum in 1998-99 dollars, compared with the estimate for the Option 1 of \$1.413 million per annum. This is based on indicative figures for the two existing marine parks and it should be noted that the ratio between corporate costs and park operational costs is likely to reduce as corporate efficiencies will be achieved with additional parks. From the figures presented in table 3 the difference for existing parks under option 1 and 3 is \$191,400 (JBMP) and \$313,600 (SIMP). Employment under Options 2 and 3 is estimated at 20.5 full time equivalent positions (EFT), and under Option 1 at 12.3 EFT.

These costs reflect the on-going operational costs associated with the implementation of the Act and Regulation for the two declared marine parks. Assuming any additional parks have the same operational costs as the declared parks, then based on the average cost for the two parks, additional operational costs for each new park would be approximately \$690,000 per annum.

These incremental costs (plus other costs) are, as in all cost benefit studies, to be compared against the outcome benefits to determine the net benefit to the community.

### **3.2 Operator compliance costs**

Costs for users in complying with the Marine Parks Regulation fall into two categories:

- additional costs in providing necessary information in respect of permits, licences etc (operator administration costs)
- operational costs which are impacted by any change in regulations.

Little specific data is available at this stage to estimate the incremental costs of compliance, but the following observations can be made:

- operator administration costs are not thought likely to change significantly for operators under Option 3 compared to Option 2. Some incremental permit and licence costs are likely to be incurred relative to Option 1, where areas do not currently require permit and licence applications.
- Operational cost changes will be dependent on the nature of the use and the specific impact on the activity in question. These could include:
  - extra fuel use if activities require higher journey distances
  - extra costs of on-board equipment, potentially including electronic transponders and effluent storage tanks; the latter may be required to prevent effluent disposal in marine parks.
  - Fines and penalties incurred will be deposited in the Marine Parks Fund (established under Section 42 of the Act) and will contribute directly towards the management of marine parks. The penalties are the same or similar to Fisheries Management Act regulations. The maximum penalty under the Marine Parks Regulation is set under

Marine Park Act. Schedule 2 of the draft Marine Parks Regulation includes a list of penalty notice offences under the regulation. The maximum penalty notice is \$500. Infringement fines are again similar to the Fisheries Management (General ) Regulation, which is currently enforced. The establishment of the penalties under the Regulations does not result in a significant change or impact to current users. Except that a park management benefit will result, as fines will be directed into a fund for the management of marine parks.

### 3.3 Productivity / output impacts

*A range of output impacts could potentially arise*

Productivity impacts are estimated to reflect any change in net outputs (in value added terms) of activities consequent on the change in regulations or implementation of new regulations (this excludes any cost changes incurred under the compliance category).

For the Marine Parks Regulation, whilst the degree to which activities are impacted will depend on the precise zoning, there are potentially activities which will undergo displacement, particularly in the areas which were not previously managed under aquatic reserves regulations. This may or may not lead to a reduction in net output, depending on the nature and extent of the displacement.

A complicating factor is that certain activities may be interrelated either in a positive way (ie. they move in the same direction) or there may be trade-offs between them.

The activities which may be affected are now detailed.

#### 3.3.1 Commercial Fisheries

*Specific data is required to determine the significance of the impact on fisheries*

Whether there is a potential negative impact on commercial fishing from the draft Regulation is not clear. Research<sup>2</sup> has been undertaken that indicates that while fishery harvests can initially fall as a portion of the population is removed from the fishery, over time harvests can increase .

Marine parks have the potential to increase catches in two ways, through emigration of large fish across the border (spill over) and through the export of larvae which may enhance recruitment into regional fishery stocks. Marine parks also have indirect benefits that include helping to maintain species genetic diversity and population size structure, providing a buffer against failure and providing unharvested "baselines" from which to measure the effects for fishing.<sup>3</sup>

Empirical evidence<sup>4</sup> for temperate marine parks does suggest that they are likely to support higher densities and larger sizes of heavily fished species than are found outside the park , and local catches outside the restricted area are expected to benefit.

An important benefit arising from marine parks is the specific protection and management of fish nursery's. In the USA, the economic value of nursery habitat

<sup>3</sup> Rowley, R.J 1982 An Assessment of the Impacts of Marine Reserves on Fisheries, a report prepared for the dept of conservation, DUNEDIN

to fisheries has been estimated to be \$5000 ha/year, while the destruction of coastal estuaries over the last 20 years has been estimated to cost \$200 million annually.<sup>4</sup>

Considerations as to whether marine parks will increase fisheries production include:

- it is known that marine parks demonstrate higher densities and larger sizes of heavily fished species than outside<sup>5</sup>
- these populations which develop in parks, supplement surrounding fisheries through export of larvae and adult fish
- in theory, this spillover may in time either offset any loss of fishing area resulting from the creation of marine parks, assist in the maintenance of catches, or possibly increase catches.

However, there is limited evidence to suggest adult spillover occurs to a scale sufficient to provide a net increase in catch<sup>6</sup>.

In the absence of clear proof of, or data on, the impact on fisheries, it is not possible to provide indications of how significant these impacts may be at the generic level.

In addition, it should not be over-looked that there are potential short-term impacts and losses associated with the displacement of fishing effort, causing increased pressure and effort on other nearby fishing grounds. Displacement can result in additional management costs and potential costs to fishing operations, as well as ecological costs associated with localised over-fishing.

The proposed marine park closure power is essentially the same as the existing power under the Fisheries Management Act, which is currently routinely applied for fisheries management purposes. Accordingly, the impact of this clause in the draft Regulation on commercial fishing would be minimal.

Although commercial fishing operations do not require a permit from the Authority to operate in a marine park, it is likely that information requirements on operators will be greater, which will require licensed operators to spend more time accurately recording catch details and vessel activities when operating within marine park

### 3.3.2 Tourism and Recreation

Marine parks provide opportunities for many types of recreational and tourism activities, and these are probably the most important economic benefits of marine parks. International studies have indicated that net returns from recreational activities can be as much as \$500 ha/year (subject to the location of the marine

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<sup>4</sup> De Groote R.S 1991 Functions and Socio Economic values of coastal/ marine protected areas - A paper for the Thematic meeting on economic impact of protected areas of the Mediterranean Protected Areas network in Adjaccio, Corsica.

<sup>5</sup> Rowley, *ibid*, pg. 234.

<sup>6</sup> Alcula and Russ, 1990, cited in Rowley *qv*/ pg 237

*Displacement of recreation activities may occur, but alternatives may exist*

park)<sup>7</sup>. A broad-scale economic analysis of the SCUBA diving value for Julian Rocks (NSW) in 1992 estimated that the total annual expenditure of divers was around 2.8 million per year (based on 20,878 dives per year).<sup>8</sup>

Activities which fall into the tourism and recreation category include diving, whale-watching spear fishing, recreational fishing and boating. Initial discussions with a small number of stakeholders (members of the marine park advisory committees) undertaking these activities, indicate that apart from the effluent discharge issue for boats (dealt with separately), the impacts could potentially be both positive and negative since:

- Displacement of these activities will only occur in specific zones, which are declared in areas where the activity is currently less managed.
- Where displacement does occur, opportunities for these activities are relatively plentiful, so there may be a transfer effect with the activity being undertaken in another region. There may therefore be no net loss to overall output.
- Where displacement does not occur, the activity can be enhanced by the improved marine environment. The improved marine environment could raise the profile of the area and increase the attractiveness of activities such as diving and whale watching.

*Tourism may be both positively and negatively impacted*

Commercial tourism, however, is one sphere of activities where the designation of a marine park is possibly have both positive and negative impacts on sectoral output and losses could potentially occur:

- With any displacement of activities from areas, if these are not replaced by activities elsewhere.
- Control of activities to certain limits (eg. whale watching) in the marine park zones.

On the benefit side, improvement of the marine environment, higher profile and conservation status could potentially increase the demand for commercial tourism activities, within the specified controls.

Under the draft Regulation, all commercial operators will require a permit from the Authority to operate in a marine park (this is currently the case for Solitary Islands Marine Park). Permit fees can be imposed under the Act or Regulation, however they are not considered at this time.

The closure provision for activities in marine parks could result in impacts to tourist operators subject to the objective of its application. For example, closing an area to whale-watching for a given period could reduce the opportunities to whale watching charter vessels. Conversely, however, the use of the closure tool to achieve ecologically sustainable use of the area and to maintain marine

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<sup>7</sup> De Groot 1991

<sup>8</sup> Davis DD et al 1995 Conflicts in a Marine Protected Area, *Australian Parks and Recreation*, Autumn

ecological processes is likely to have long-term benefits for all commercial operators.

### 3.3.3 On-shore development

The main issue here is the potential impact of new or existing developments which are adjacent to marine parks where the associated effects are contrary to the controls of a zone. For example, urban runoff and stormwater drainage where a sanctuary zone is situated near or within the inshore area. Two potential impacts then arise:

- The development being refused permission to progress
- Additional infrastructure costs of controlling the impacts emanating from the development, so that the output is consistent with the Marine Park zone requirements.

### 3.3.4 Education and Science

Education and science are likely to benefit under the draft Marine Parks Regulation. Scientific research and education use also presents a range of less tangible benefits, such as a greater community understanding and support of natural ecosystems.

Field research value can be determined from the number of field excursions organised in a particular area. For example, a study in the Dutch Wadden Sea estimated the science benefits of marine parks to be around \$16 ha/year.<sup>9</sup> If this figure was applied to the Solitary Islands Marine Park which provides a focus for research by students and scientists into subtropical systems in a relatively pristine state<sup>10</sup>, the science benefits alone would be greater than the total operational costs of the park.

The conduct of scientific research is already permitted in aquatic reserves and national parks through a permit system and a similar practice is proposed under the draft Regulation.

Potentially there are benefits to research flowing from better management of ecological and biodiversity processes under the new regulation.

## 3.4 Cultural impacts

Cultural heritage impacts should be considered, both in regard to the marine areas and land areas (the latter are also covered by the MPA Regulation and existing Aquatic Reserve Regulations). The impacts fall into two broad groups:

- Heritage and cultural values of both land and water areas (including Aboriginal interests)

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<sup>9</sup> De Groot, 1991

<sup>10</sup> NPWS (Northern region), *Strategies for best practice management of the Solitary Islands Marine Park*, 1998



- Specific items of heritage value eg. shipwrecks.

There is potentially a positive impact of the Regulation in giving increased protection to cultural sites and areas in the marine parks. The marine environment holds spiritual value for many people in the community, including Aboriginal people.

The socio-economic value of this function for the conservation of these areas has been estimated in the USA to be around \$640 ha/year for each cultural area.<sup>11</sup>

Any adverse impacts attributable to the generic MPA Regulation are not likely to be significant since:

- The MPA Regulation does not affect the operation of native title Acts and Regulations
- Any potential cultural impacts will only be discernible once zone plans are applied.

### **3.5 Ecological outcomes**

Ecological impacts are the expected key benefit outcomes of the changes in the regulatory regime.

Nature conservation is the most important objective of marine parks and therefore they have very high conservation benefit and value. De Groot (1991) suggests that the cost of the Regulation to manage a marine park should be seen as production capital, providing employment and safeguarding opportunities for other uses and benefits.

The ecological impacts of the Marine Parks Regulation, resulting from the holistic management approach proposed, fall into the following key categories.

- Sustainability of marine ecosystems leading to maintained species diversity through controlled collection or extraction of flora and fauna and the control of pollutant damage to habitats.
- Maintaining marine habitat which in turn can enhance species diversity and numbers.

Table 4 gives some examples of the benefits of ecological outcomes.

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<sup>11</sup> De Groot, 1991

**Table 4: Potential Ecological impacts**

Objective	Detailed Impacts	Examples	Benefit
<b>Sustainability</b> Collection or extraction of flora and fish	Controlled extraction of marine flora	Licensed collection of decorative marine flora.	Maintain species diversity
	Controlled extraction of marine fauna	Licensed marine shell collection Licensed collection of aquarium fish Licensed commercial fishing Reduction in recreational fishing	Maintain species diversity Maintain species diversity
	Pollution control		Reduce effluent discharge into sensitive zones (from vessels and adjacent land areas)
<b>Improved Habitat Protection</b>	Protection of sea-grass beds	Creation of no-take zones	Increased value of fisheries stocks/protect species diversity
	Protection of mangroves		Improved fish breeding opportunities and maintaining ecological processes
	Protection of sea-bed habitat		Improved fish breeding, existence value of flora and fauna preservation
	Increased predator numbers	Claims that improved protection of seals has reduced fish stocks by increasing predator numbers.	Reduced fishery stocks, which may be offset by increasing fish stocks resulting from more effective management of the resource
	Control & Management of habitats for birds, mammals, inter-tidal communities	Mammals / bird watching	Improve breeding process
<b>Increased health of natural system</b>	Less disease		Improved ability to rejuvenate

*Precise ecological outcomes are not certain and require site modelling to evaluate*

Measurement of ecological outcomes relies on determining what changes will occur in species diversity and numbers because of the MPA Regulation. This means that the effect of the proposed Regulation must be compared to the biological consequences of continuing with the existing regulatory regime.

The method of assessment involves a number of steps:

1. Determine the level of activity displacement. The effectiveness of the management under the new regulations would need to look at both the identification of and significance of those areas that should be protected for the various environmental reasons.
2. Determine if possible impact on fish stocks.
3. Deduce values for biological impacts. The value of environmental changes such as improved habitat are difficult to assess. Preservation of habitat has values such as nature conservation value, which are not related to use (also termed existence value). For instance, maintaining critical habitats for potentially vulnerable species (51 marine mammals and birds are classified as endangered, vulnerable or protected) will be valued by the community.

Determining these values is difficult, and usually involves complex and costly methodologies such as contingent valuation surveys. In a study of this scale, such investments may not be justified. An alternative methodology is to use existing valuation research to determine whether further valuation is required. However, inspection of the NSW EPA *Envalue* database does not reveal any immediately useable studies for benefit transfer.

Overall, there are a number of evaluation methods which could be used but since data is unavailable they cannot be applied in this RIS.

#### 4. Impact statement

Comparing the regulatory options can only be done in a generic way. Clearly, the implementation of zoning plans is the critical factor in the determination of potential impact. The following table compiles the comparative information which has been considered in this report.

The table is presented in the following way. For each of the impact groups considered in section 3, we have identified:

- The fact that data is not available to measure these impacts (shown under Option 1).
- The reliance of the impact on specific regulations and zone plans for Options 2 and 3
- The impacts as a cost, or a benefit, or zero, or potentially a combination of these (shown as *C/B*),
- The broad indicator of ability to manage the impact as analysed in section 2 (shown as *Manage*).

Table 5: Impacts of MPA Regulation

Impact	Option 1 MPA with no Regulation	Option 2 MPA with Aquatic Reserve Regulation	Option 3 MPA + Regulation
<b>Regulatory costs</b>			
Administration costs <i>C/B</i>	\$1.4 million p.a. <i>Cost</i>	\$2.2 million p.a. <i>Cost</i>	\$2.2 million p.a. <i>Cost</i>
Compliance costs <i>C/B</i>	Insufficient data <i>Zero or Cost</i>	Costs incurred <i>Cost</i>	Costs incurred <i>Cost</i>
<b>Activity impacts</b>			
Commercial Fisheries <i>C/B</i> <i>Manage</i>	Insufficient data <i>Unknown</i> <i>Limited</i>	FMA/Zones <i>Zero or Cost</i> <i>Pot. Long-term benefit</i> <i>Effective</i>	MPA / Zone plans <i>Zero or Cost</i> <i>Pot. Long-term benefit</i> <i>Effective</i>
Recreational <i>C/B</i> <i>Manage</i>	Insufficient data <i>Benefit or Cost</i> <i>None</i>	Diversion of activities <i>Benefit or cost</i> <i>Limited</i>	Diversion of activities <i>Benefit or cost</i> <i>Effective</i>
Other commercial <i>C/B</i> <i>Manage</i>	Insufficient data <i>Benefit or Cost</i> <i>None or limited</i>	FMA/Zones <i>Benefit or Cost</i> <i>Limited</i>	MPA / Zone plans <i>Benefit or Cost</i> <i>Effective</i>
Land development impacts <i>C/B</i> <i>Manage</i>	Insufficient data <i>Zero or cost</i> <i>Very limited</i>	Site specific impacts <i>Zero or cost</i> <i>Very limited</i>	Site specific impacts <i>Zero or cost</i> <i>Limited</i>
Scientific Research <i>C/B</i> <i>Manage</i>	Insufficient data <i>Zero or benefit</i> <i>Limited</i>	FMA / Zones <i>Benefit</i> <i>Limited</i>	MPA / Zone plans <i>Benefit</i> <i>Effective</i>
<b>Cultural impacts</b> <i>C/B</i>	Insufficient data <i>Zero or benefit</i>	Protected <i>Benefit</i>	Protected <i>Benefit</i>
<b>Ecological impacts</b>			
Ecological sustainability Biological diversity Habitat protection <i>C/B</i>	Insufficient data <i>Zero or benefit</i>	FMA / Zones <i>Benefit</i>	MPA / Zone plans <i>Benefit</i>

*More effective management of ecological objectives and activities are key changes*

There are three key changes consequent on the implementation of the Marine Parks Regulation:

- The specific focus on, and holistic management of, the ecological and biodiversity outcomes
- The expected increased effectiveness of using resources to control activities in order to achieve these outcomes
- The consistency of the regulatory approach being undertaken with international guidelines and accepted practices for marine park areas.

*Detailed Park specific data is required to determine community net benefit*

It is clear that it will require a range of data on the impacts specifically occurring in each park to determine with any accuracy the net benefit to the NSW community. The significance of the impact and the information required to assess it will depend on the zoning plans that are developed and applied for each marine park.

From the analysis of the generic Regulation the key parameters in determining the net benefit are:

- Ecological outcomes
- Productivity impacts in the key sectors - commercial fishing / aquaculture and tourism.

This will require a range of specific data and stakeholder input for the parks in question and would require the zoning and operational plans of the parks to be developed and known.

Whether trade-offs exist between the different impacts is not certain. Marine parks have historically been created to protect biodiversity, preserve habitat and to attract tourists. Decisions on whether to establish a marine park have generally required consideration of both these benefits and the cost (if any) to fisheries in foregone harvest. The success of marine parks is greatly increased if they can protect the biodiversity and habitat while simultaneously maintaining or even enhancing fishery production. More quantitative research on impacts and optimal design of marine parks is required.<sup>12</sup>

However, it is not possible to compare the existing situation in a net benefit sense with the proposed MPA Regulation for the following reasons:

- The existing situation is a composite in that it involves areas which are currently managed under aquatic reserves regulations (Option 3) and those that are not (Option 2).
- There is a lack of data in general (such as comparable studies) from which relevant impact evaluation data could be sourced

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<sup>12</sup> Holland D, & Brazee R., *Marine reserves for fisheries management* in Marine Resource Economics (1996).

- Much of the required information for evaluation purposes will depend on the application of the zone plans under the proposed MPA regulation.

The willingness to pay method of valuation (“contingent valuation”) is capable, if properly structured, to cover a range of the data gaps which need to be filled to value the key impacts of the Regulation. The use of community willingness to pay (WTP) data could, if properly constructed, be used to elicit a value for a “basket” of impacts including:

- Ecological benefits (existence value)
- Cultural and scientific benefits
- Other productivity impacts (which may or may not include trade off effects eg. if fishery output declines, the overall WTP is lower than the WTP just for the ecological benefits).

It is possible to conduct a simple threshold analysis to determine what the benefits of the Regulation would need to be to cover the incremental administrative costs of the Regulation.

Finally, from the few studies that have been carried out overseas, marine parks appear to result in an overall positive outcome, having high benefit-cost ratios (approaching 10 to 1)<sup>13</sup> and, generally, marine parks are economically beneficial when direct and indirect costs and benefits relating to all values are considered.<sup>14</sup>

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<sup>13</sup> De Groot, 1991

<sup>14</sup> Posner et al 1981 Economic impact analysis for the Virgin Island National Park Island Resources Foundation, St Thomas, US Virgin Islands

## 5. Community Consultation Strategy

### 5.1 OBJECTIVES

- Meet the requirements of the Subordinate Legislation Act
- Establish a constructive relationship between the Authority and stakeholders
- Minimise public controversy surrounding the adoption of the draft Regulation
- Increase stakeholder knowledge about the Marine Park Act, the proposed regulation and the Authority.
- Set the ground work for the development of the zoning plans

The requirements of the Subordinate Legislation Act include:

- The preparation of a Regulatory Impact Statement
- Notice and advertisement in daily newspapers, to include:
  - object of the proposed regulation
  - advising where copies of the RIS can be obtained and inspected
  - advising whether the proposed regulation is available
  - inviting comments and submission within a specified period (minimum 21 days)
- Consultation is to take place with appropriate representatives of consumers, relevant interest groups, and any sector of industry, commerce or the community likely to be affected by the proposed Regulation
- All comments received are to be appropriately considered.

The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are to be commensurate with the impact likely to arise for consumers, the public, relevant interest groups, and any sectors of industry or commerce from the making of the Regulation.

The public consultation process for the introduction of the draft Regulation involves two main stages. The first stage involved preliminary work to improve stakeholder understanding of the proposed regulations, to facilitate informed and coordinated comment and feedback. This was undertaken during June and July 1998.

Stage two involves the formal public exhibition and will be undertaken during September and October 1998. In addition to this the Authority has established a Marine Parks Advisory Council and Marine Park Advisory Committees. These committees consist of a broad range of key stakeholders and play an important role in the public consultation strategy for the introduction of the Regulations.

*Marine Park Advisory Council and Advisory Committees play an important role in the public consultation strategy*



## **5.2 STAGE ONE**

### **Objectives**

- to establish a relationship with stakeholder groups (including local and regional indigenous groups)
- to provide stakeholders with a basic briefing on the Marine Park Act, the Authority, park management structures, and the process for adoption of the Regulation.

### **Tasks**

- Develop stakeholder contact lists in a form that can be used for ongoing contact with Stakeholders - June
- Encourage individuals and organisation to register an interest in the consultation process - add these to the contact lists. June - July
- Invite stakeholders to briefings (undertaken in June and July 1998)
- Meet with key stakeholders to:
  - Brief on Marine Parks Act, the role of Authority, and park management and staffing.
  - Brief on process for adoption of regulations, RIS requirements.
  - Explain the difference between the General Regulation and the Zoning Regulations (zoning plan).
  - Summarise proposed framework of regulation.
  - Seek stakeholders key issue of interest.
  - Outline proposed time frame and on going opportunities for input.
- Prepare Question and Answer material resulting from briefings

## **5.2 STAGE TWO - Formal exhibition period**

### **Objective**

- Inform stakeholders and the community of the formal exhibition period
- Seek comments from stakeholders on the proposed draft regulation
- Meet the formal exhibition requirements of the Act.

### **Tasks**

- Advertise gazettal notice, advertisement in metropolitan and regional newspapers. Media release issues to coastal media.
- Mailout draft Regulation and RIS to key stakeholders. Documents on display at key NPWS and NSW Fisheries Sydney and regional Offices
- Analyse public submissions
- Prepare report on submissions for Marine Park Authority and Marine Park Advisory Council.

# Marine Parks Regulation 1998

under the

Marine Parks Act 1997

## Explanatory note

The object of this Regulation is to make provision for or with respect to the following matters under the *Marine Parks Act 1997*:

- (a) the management, protection and conservation of marine parks,
- (b) regulating and prohibiting the carrying out of certain activities in a marine park,
- (c) the classification of areas within marine parks for different uses by means of zoning plans.

Part 2 of the Regulation provides for four zones in marine parks (being the sanctuary zone, the refuge zone, the general use zone and the special purpose zone), and sets out the objects of those zones and the special provisions applying in those zones. For instance, the sanctuary zone attracts the highest level of protection, and activities that result in harm to fish, animals or habitat are prohibited. Schedule 1 to the Regulation is to contain zoning plans for individual marine parks (no zoning plans are included at the commencement of this Regulation).

Part 3 of the Regulation prohibits certain activities in marine parks except with the consent of the Marine Parks Authority. These activities include damaging moorings and other facilities in a marine park, bringing exotic animals or plants into a marine park, organising or conducting sporting and recreational activities, and camping or staying over in a marine park.

Part 3 also enables the Authority to prohibit, on a temporary basis, the carrying out of certain activities in a marine park by means of a notification published in the Gazette (this will be known as a marine park closure).

Part 4 of the Regulation includes miscellaneous provisions relating to the functions of the Authority, and provides that certain offences under the Regulation (as specified in Schedule 2) may be dealt with by way of penalty notice. Schedule 2 also sets out the penalties for offences that are dealt with by way of penalty notice.

The *Protection of the Environment Operations Act 1997* sets out various offences that are also applicable to marine parks, such as the offence of polluting waters (see section 120 of that Act). That Act also allows a public authority such as the Marine Parks Authority to be given power to enforce certain provisions of that Act.

This Regulation is made under the *Marine Parks Act 1997*, including sections 15, 16, 17 and 48 (the general regulation-making power).

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# Marine Parks Regulation 1998

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Marine Parks Regulation 1998*.

### 2 Commencement

This Regulation commences on *[date to be inserted]*.

### 3 Definitions

In this Regulation:

**aquaculture** has the same meaning as in section 142 of the *Fisheries Management Act 1994*.

**domesticated animal** includes a pet.

**exotic animal** means any animal that is not indigenous to a marine park.

**exotic plant** means any plant that is not indigenous to a marine park, other than food for human consumption.

**extensive aquaculture** means aquaculture undertaken without providing supplementary food for the fish or marine vegetation that are being cultivated.

**fish** has the same meaning as in the *Fisheries Management Act 1994*.

**Note.** Under the *Fisheries Management Act 1994*, **fish** means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead), including oysters and other aquatic molluscs, crustaceans, echinoderms, beachworms and other aquatic polychaetes.

**general use zone** means an area in a marine park that is classified by the zoning plan for the marine park as a general use zone.

**habitat** means any area occupied, or periodically or occasionally occupied, by animals or plants (or both), and includes any biotic or abiotic component.

**harm** means:

- (a) in the case of any animal—take, interfere with, injure or otherwise harm the animal, or
- (b) in the case of a plant—gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm the plant (or any part of it).

**intensive aquaculture** means aquaculture undertaken by providing supplementary food for the fish or marine vegetation that are being cultivated (whether or not naturally occurring food is consumed or available for consumption by the fish or marine vegetation).

**moor** a vessel includes attach the vessel to a mooring by any means.

**mooring** means any post, stake, pile, float, pontoon or any other object (other than the anchor of a vessel) secured by any direct or indirect means to the waters' bed for the purpose of attaching a vessel to the bed.

**refuge zone** means an area in a marine park that is classified by the zoning plan for the marine park as a refuge zone.

**sanctuary zone** means an area in a marine park that is classified by the zoning plan for the marine park as a sanctuary zone.

**special purpose zone** means an area in a marine park that is classified by the zoning plan for the marine park as a special purpose zone.

**take** an animal includes:

- (a) catch, capture or kill an animal, or
- (b) gather or collect an animal, or
- (c) remove an animal from any rock or other matter.

**the Act** means the *Marine Parks Act 1997*.

**zoning plan** means a zoning plan for a marine park, as set out in Schedule 1 to this Regulation.

**Note.** At the commencement of this Regulation, Schedule 1 will not contain any zoning plans. Certain words and terms used in this Regulation are defined in the Act and accordingly have the same meaning as in the Act. These include the following:

**animal** means any animal-life (other than human), whether vertebrate or invertebrate, and in any stage of biological development, and includes a dead animal.

**operational plan** for a marine park means the operational plan for the marine park adopted under Part 4 of the Act.

**plant** means any plant-life, whether vascular or non-vascular and in any stage of biological development, and includes fungi, lichens and dead plants.

#### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Marine park zones

### Division 1 Zones in marine parks

#### 5 Zoning plans

- (1) Schedule 1 sets out the zoning plan for each marine park specified in that Schedule.
- (2) A zoning plan for a marine park may include any number of sanctuary, refuge, general use and special purpose zones.

**Note.** Section 16 of the Act provides that the regulations may make provision for or with respect to classifying areas within a marine park for different uses by means of zoning plans set out in the regulations. At the commencement of this Regulation, Schedule 1 will not contain any zoning plans.

### Division 2 Sanctuary zone

#### 6 Objects of sanctuary zone

The objects of the sanctuary zone are:

- (a) to provide the highest level of protection for biological diversity, habitat, ecological processes and natural and cultural features, and
- (b) where consistent with paragraph (a), to provide opportunities for the following activities in the zone:
  - (i) recreational, educational and other activities that do not involve harming any animal or plant or causing any damage to or interference with natural or cultural features or any habitat,
  - (ii) scientific research.

#### 7 Protection of animals, plants and habitat in sanctuary zone

A person must not, while in the sanctuary zone of a marine park:

- (a) harm, or attempt to harm, any animal, or
- (b) harm, or attempt to harm, any plant, or
- (c) damage, take or interfere with, or attempt to damage, take or interfere with, any habitat (including soil, sand or other material occurring naturally within the zone),

except with the consent of the Authority.

Maximum penalty: 100 penalty units.

#### 8 Aquaculture not permitted in sanctuary zone

Aquaculture is not permissible in a sanctuary zone of a marine park.

**Note.** Section 12 (2) of the Act provides that an aquaculture lease applying to any area within a marine park must not be extended or renewed (except as provided for by section 12 (3) of the Act), unless the regulations provide that aquaculture is permissible in the relevant area.

#### 9 Vessels to be anchored or moored only at designated sites

A person must not, while in the sanctuary zone of a marine park, anchor or moor a vessel except in an area, or at a mooring, designated by the Authority for that purpose.

Maximum penalty: 100 penalty units.

### Division 3 Refuge zone

#### 10 Objects of refuge zone

The objects of the refuge zone are:

- (a) to provide a high level of protection to biological diversity, habitat, ecological processes and natural and cultural features in the zone, and
- (b) where consistent with paragraph (a), to provide opportunities for recreational and commercial activities (including fishing), scientific research, educational activities and other activities, so long as they are ecologically sustainable, have a low impact on fish populations within the zone and a negligible impact on other animals, plants and habitat.

#### 11 Protection of animals, plants and habitat in refuge zone

A person must not, while in the refuge zone of a marine park:

- (a) harm, or attempt to harm, any animal (other than fish), or
- (b) harm, or attempt to harm, any plant, or
- (c) damage, take or interfere with, or attempt to damage, take or interfere with, any habitat (including soil, sand or other material occurring naturally within the zone),

except with the consent of the Authority or in accordance with the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

#### 12 Limited fishing activities in refuge zone

- (1) A person must not, while in the refuge zone of a marine park, take, or attempt to take, any fish unless:

- (a) the fish are taken by the use of a hook and hand held line, by hand or by use of a scoop net or landing net, or
- (b) in the case of any species of fish that are identified (for the purposes of this clause) in the zoning plan for the marine park, the fish are taken by the use of a spear, or
- (c) the fish are taken in accordance with the conditions of an aquaculture permit issued under the *Fisheries Management Act 1994*,

and, in any case, the person complies with the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

- (2) In this clause:

*hand held line* means a hand line or rod and line.

*landing net* has the same meaning as in the *Fisheries Management (General) Regulation 1995*.

*scoop net* means a net referred to as a dip or scoop net (prawns) in the *Fisheries Management (General) Regulation 1995*.

#### 13 Intensive aquaculture not permitted in refuge zone

Intensive aquaculture is not permissible in a refuge zone of a marine park.

**Note.** Section 12 (2) of the Act provides that an aquaculture lease applying to any area within a marine park must not be extended or renewed (except as provided for by section 12 (3) of the Act), unless the regulations provide that aquaculture is permissible in the relevant area.



## Division 4 General use zone

### 14 Objects of general use zone

The objects of the general use zone are:

- (a) to provide protection to biological diversity, habitat, ecological processes and natural and cultural features in the zone, and
- (b) where consistent with paragraph (a), to provide opportunities for recreational and commercial activities (including fishing), scientific research, educational activities and other activities so long as they are ecologically sustainable.

### 15 Protection of animals, plants and habitat in general use zone

A person must not, while in the general use zone of a marine park:

- (a) harm, or attempt to harm, any animal (other than fish), or
- (b) harm, or attempt to harm, any plant, or
- (c) damage, take or interfere with, or attempt to damage, take or interfere with, any habitat (including soil, sand or other material occurring naturally within the zone),

except with the consent of the Authority or in accordance with the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

### 16 Limited fishing activities in general use zone

- (1) Fishing is permitted in the general use zone of a marine park, but only in accordance with the zoning plan for the marine park.
- (2) A person must not, except with the consent of the Authority, take, or attempt to take, any fish in the general use zone of a marine park in contravention of the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

## Division 5 Special purpose zone

### 17 Objects of special purpose zone

The objects of the special purpose zone are as follows:

- (a) to provide for the management of biological diversity, habitat, ecological processes and natural and cultural features in the zone, where phenomena, sites or items in the zone warrant special management,
- (b) to cater for special facilities and features in the zone such as slipways, breakwaters and shipwrecks.

**Note.** At the commencement of this Regulation, this Part does not contain special provisions relating to activities that may be carried out in a special purpose zone. This may be provided for in the zoning plan concerned.

## Part 3 Regulation of activities in marine parks

### Division 1 General prohibitions

#### 18 Possession of animals or plants taken illegally or of equipment used to take animals or plants

- (1) A person who is in possession of any animal (including fish) or plant that has been taken in contravention of a provision of this Regulation is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person who, while in a marine park, is in possession of any equipment (including fishing gear) that is used, or is designed to be used, for the purposes of taking an animal or plant is guilty of an offence if the taking of an animal or plant in the park is, at that time, prohibited by or under this Regulation.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence under subclause (2) if the person charged satisfies the court:

- (a) that the equipment concerned was being transported, in accordance with the written approval of the Authority, to any place where the person could lawfully use the equipment to take animals or plants, or
- (b) that the equipment concerned was in a state in which it could not have been used to take animals or plants.

#### 19 Damage etc to marine park moorings, signs and facilities

A person must not, except with the consent of the Authority:

- (a) remove, move, damage or interfere with a mooring in a marine park (being a mooring that is provided by or on behalf of the Authority), or
- (b) remove, move, damage or interfere with a zone or boundary marker or sign in a marine park, or
- (c) place any moorings, buoys or signs in a marine park, or
- (d) damage, deface or interfere with any property or facility in a marine park (being any property or facility that is owned, managed or operated by the Authority).

Maximum penalty: 100 penalty units.

#### 20 Exotic animals and plants

- (1) A person must not:

- (a) bring any exotic animal or exotic plant into a marine park, or
- (b) cause or allow any exotic animal to be released into a marine park, or
- (c) cause or allow any exotic plant to be introduced into a marine park.

Maximum penalty: 100 penalty units.

- (2) A person does not commit an offence under subclause (1) (a) by bringing a domesticated animal into a marine park.

#### 21 Domesticated animals

- (1) A person must not:

- (a) bring any domesticated animal into a marine park except with the consent of the Authority or in accordance with the zoning plan for the marine park,

or

- (b) leave a domesticated animal unattended in a marine park.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this clause, a domesticated animal is *unattended* whenever it is not under the control of a responsible person.

## 22 Organised research activities

- (1) A person must not carry out any organised research activity in a marine park except with the consent of the Authority.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this clause, an *organised research activity* is any research activity that is organised or conducted for purposes other than for the personal interest or enjoyment of the individual who is carrying out the activity.

## 23 Commercial activities

- (1) A person must not in a marine park:

- (a) sell or hire, attempt to sell or hire, expose for sale or hire or solicit for sale or hire any article, thing or service to any person, or
- (b) conduct, or assist in the conduct of, any amusement, entertainment, instruction, performance or activity for money or other consideration of any kind, or
- (c) take any photograph, video, movie or television film for sale, hire or profit, except with the consent of the Authority.

Maximum penalty: 100 penalty units.

- (2) A person does not commit an offence under this clause by taking fish for sale in a marine park or by assisting in the conduct of that activity.

**Note.** Although this clause does not prohibit commercial fishing activities, such activities must be carried out in accordance with the *Fisheries Management Act 1994* and the regulations under that Act.

## 24 Provision of information to Authority regarding commercial fishing operations

- (1) The Authority may, by notice in writing, require any person who carries out any commercial fishing operation in a marine park to provide the Authority, within such reasonable time as may be specified in the notice, with such information in relation to those commercial fishing operations as may be specified in the notice.

- (2) A person must not:

- (a) fail to comply with the requirements of a notice served on the person under this clause, or
- (b) provide any information required by a notice under this clause that is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (3) In this clause:

*commercial fishing operation* means any activity involving the taking of any fish for sale.

## 25 Organised sporting and recreational activities

A person must not:

- (a) organise or conduct any sporting competition or tournament in a marine park (such as a fishing competition or tournament), or

- (b) organise or conduct any concert, public meeting, function, event, demonstration or similar gathering in a marine park, or
- (c) organise or conduct any training manoeuvre or similar activity or event in a marine park,

except with the consent of the Authority.

Maximum penalty: 100 penalty units.

## 26 Camping or residing in marine park

- (1) A person must not:

- (a) camp in any part of a marine park other than in an area set aside by the Authority for camping, or
- (b) stay overnight on a vessel attached to a mooring or other facility in a marine park that is owned or managed by the Authority, or
- (c) reside permanently in a marine park,

except with the consent of the Authority or in accordance with the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

- (2) In this clause:

*camp* means reside temporarily in a marine park (whether or not in a tent, caravan, cabin, vehicle, trailer or other structure) or otherwise use the marine park for the purposes of camping.

*vessel* includes a houseboat or any other structure that is capable of floating.

## Division 2 Marine park closures

### 27 Prohibition of activities in marine park

- (1) The Authority may from time to time, by notification, prohibit the carrying out of any specified activity (including the taking of fish) in a marine park or part of a marine park.
- (2) Any such prohibition is called a **marine park closure**.
- (3) A marine park closure:
  - (a) may apply absolutely or subject to conditions, and
  - (b) must specify the activities that are prohibited and the area to which it applies, and
  - (c) may only apply to the marine park specified in the notification, and
  - (d) has effect despite any other provision of this Regulation.

### 28 Publication of notification of marine park closure

- (1) The notification of a marine park closure is to be published in the Gazette.
- (2) However, if the Authority considers that the marine park closure is required urgently, the Authority may publish the notification:
  - (a) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the marine park to which the closure applies, or
  - (b) by causing a copy of the notification to be exhibited in a prominent place adjacent to the marine park to which the closure applies.
- (3) In any such urgent case, the Authority is to publish the notification in the Gazette as soon as practicable.

**29 General provisions relating to marine park closure**

- (1) A marine park closure takes effect on the publication of the notification or on a later date specified in the notification.
- (2) A marine park closure remains in force for the period (not exceeding 18 months) specified in the notification, but may be renewed by a further notification in accordance with this Division.
- (3) Before renewing a marine park closure, the Authority must consult with the advisory committee for the marine park concerned.
- (4) The Authority may from time to time amend or revoke a marine park closure by a further notification published in accordance with this Division.

**30 Offence provisions**

- (1) A person who carries out any activity in contravention of a marine park closure is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (2) A person who is in possession of any animal that has been taken in contravention of a marine park closure is guilty of an offence.  
Maximum penalty: 100 penalty units.

## Part 4 Miscellaneous

### 31 Removal of persons from marine park

- (1) A marine park ranger may direct a person to leave a marine park or any part of a marine park if, in the opinion of the marine park ranger, the person:
  - (a) is causing annoyance or inconvenience to any other person in the marine park, or
  - (b) has committed an offence under the Act or this Regulation or is likely to commit such an offence.
- (2) A person to whom such a direction is given must comply with the direction.  
Maximum penalty: 50 penalty units.
- (3) A marine park ranger may remove from a marine park, or any part of a marine park, any person who fails to comply with a direction under this clause and any vehicle, vessel, animal or other property in the possession of the person.

### 32 Penalty notice offences

For the purposes of section 38 of the Act:

- (a) each offence created by a provision of this Regulation specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 3 of Schedule 2.

### 33 Short description of offences

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision of this Regulation specified in Column 1 of Schedule 2 is:
  - (a) the expression specified in Column 2 of that Schedule, or
  - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision of this Regulation specified in Column 1 of Schedule 2, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used, and any such document continues to have effect as if that expression had not been amended or repealed.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

### 34 Delegation

The Authority may delegate the exercise of any of its functions under this Regulation (other than power of delegation) to any person.

### 35 Giving of consent by Authority

- (1) The consent of the Authority under this Regulation may be given:

- (a) by means of a written statement, or
  - (b) in the form of a licence, permit, approval or other form of authorisation (whether or not in writing).
- (2) The Authority's consent may be given:
- (a) generally or in a particular case, and
  - (b) either unconditionally or subject to conditions.
- (3) If the Authority consents to the carrying out of any activity in a marine park, it is a condition of the consent that the activity is carried out in accordance with the zoning plan for the marine park.
- (4) The Authority is not to give consent to the carrying out of any activity in a marine park or a zone of a marine park that, in the opinion of the Authority:
- (a) is inconsistent with the objects of the Act or the objects of the zone, or
  - (b) is inconsistent with the zoning plan or the operational plan for the marine park.

### **36 General defence**

A person does not commit an offence under this Regulation for any thing done:

- (a) by a marine park ranger in the exercise of his or her functions as a marine park ranger, or
- (b) under the direction of the Authority.

## Schedule 1            Zoning plans for marine parks

(Clause 5)

**Note.** At the commencement of this Regulation, Schedule 1 will not contain any zoning plans.

## Schedule 2            Penalty notice offences and short descriptions

(Clauses 30 and 31)

Column 1 Offence	Column 2 Prescribed expression	Column 3 Penalty
Clause 7 (a)	harm/attempt to harm animal in sanctuary zone	\$500
Clause 7 (b)	harm/attempt to harm plant in sanctuary zone	\$500
Clause 7 (c)	damage/take/interfere with habitat in sanctuary zone	\$500
Clause 9	anchor/moor vessel in sanctuary zone	\$500
Clause 11 (a)	harm/attempt to harm animal in refuge zone	\$500
Clause 11 (b)	harm/attempt to harm plant in refuge zone	\$500
Clause 11 (c)	damage/take/interfere with habitat in refuge zone	\$500
Clause 12	illegally take/attempt to take fish in refuge zone	\$500
Clause 15 (a)	harm/attempt to harm animal in general use zone	\$500
Clause 15 (b)	harm/attempt to harm plant in general use zone	\$500
Clause 15 (c)	damage/take/interfere with habitat in general use zone	\$500
Clause 16 (2)	illegally take/attempt to take fish in general use zone	\$500
Clause 18 (1)	possess animal/plant taken illegally	\$500
Clause 18 (2)	possess illegal equipment	\$500
Clause 19 (a)	remove/move/damage/interfere with mooring	\$300
Clause 19 (b)	remove/move/damage/interfere with zone/boundary marker/sign	\$300
Clause 19 (c)	place mooring/buoy/sign	\$300
Clause 19 (d)	damage/deface/interfere with marine park property/facility	\$300
Clause 20 (a)	bring exotic animal/exotic plant into marine park	\$300



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Clause 20 (b)	cause/allow exotic animal to be released into marine park	\$500
Clause 20 (c)	cause/allow exotic plant to be introduced into marine park	\$500
Clause 21 (1) (a)	illegally bring domesticated animal into marine park	\$200
Clause 21 (1) (b)	leave domesticated animal unattended in marine park	\$200
Clause 22 (1)	organise/conduct research activity in marine park	\$300
Clause 23 (1) (a)	sell/hire/attempt to sell/hire/expose for sale/hire/profit article/thing/service	\$300
Clause 23 (1) (b)	conduct/assist in conduct of amusement/entertainment/instruction/performance/activity	\$300
Clause 23 (1) (c)	take photograph/video/movie/film for sale/hire/profit	\$300
Clause 24 (2) (a)	fail to provide information	\$200
Clause 24 (2) (b)	provide false/misleading information	\$300
Clause 25 (a)	organise/conduct sporting competition/tournament	\$200
Clause 25 (b)	organise/conduct concert/public meeting/function/event/demonstration/gathering	\$200
Clause 25 (c)	organise/conduct training manoeuvre/activity	\$200
Clause 26 (1) (a)	camp in marine park	\$200
Clause 26 (1) (b)	unauthorised mooring of vessel	\$200
Clause 26 (1) (c)	permanently reside in marine park	\$500
Clause 30 (1)	carry out prohibited activity	\$500
Clause 30 (2)	possess animal taken illegally	\$500
Clause 31 (2)	fail to comply with direction to leave marine park	\$200

## **APPENDIX 2**

# **Summary of Public Submissions on the Regulatory Impact Statement**

# ***NSW MARINE PARKS AUTHORITY***

## **MARINE PARKS REGULATION**

### **REPORT ON PUBLIC SUBMISSIONS**

#### **1. INTRODUCTION**

This report summarises results of an analysis carried out on 265 public submissions received in relation to the draft Marine Parks Regulation 1998. Submissions were analysed using a matrix which cross-referenced issues and comments, recording the submission number in each instance.

This report summarises the comments submitted on each major issue and on each section of the draft Regulation. Many comments submitted were not relevant directly to the review of the draft Regulation, with many comments relating to matters to be addressed in the process of developing the Zoning and Operational Plans for marine parks. A comment by marine park staff has been provided as to the relevance of the comments to the Regulation process.

Marine park staff have then provided recommendations as to a suggested response to each issue during the review of the draft Regulation.

#### **2. GENERAL ISSUES**

##### **2.1 TONE OF REGULATION**

Submissions commenting on the tone of the regulation were all negative, generally stating that the regulations appeared too negative and dictatorial. One submission stated that the Regulation was not specific on many issues and could prove to be "a sleeping giant".

##### **Comment**

The regulation highlights activities which are *not* permissible in zones or marine parks resulting in the overall negative tone of the regulation. This appears to be the standard format for drafting legislation and is unlikely to affect the implementation of the regulation or the ability to comply with or enforce the regulations.

##### **2.2 REGULATION PROCESS**

Of all the issues raised in the submissions, the most common criticism was that the submission period was unfairly short. Another issue common to many submissions was the difficulty in people had in commenting on the impact of the regulations without reference to a zoning plan.

Other comments on the regulation process referred to the lack of consultation in developing the regulations and concerns that issues raised in submissions would be ignored or trivialised.

##### **Comments**

Whilst the initial display period for the RIS was three weeks, this was time was extended for a week. In addition, submissions received up to a week following due date have been taken into

account. A series of stakeholder briefings before the release of the draft regulations also enabled consideration of the general content of the regulation before their release.

The time allowed for public submissions may have appeared to be shorter due to regional newspapers not being published daily. In some regional areas, media releases regarding the regulations were not carried until the display period had been extended.

### **2.3 BIODIVERSITY AND ECOLOGICAL PROCESS MANAGEMENT**

A number of submissions (10) made mention of biodiversity management issues, particularly the management of invertebrates, cetaceans and seabirds.

Submissions made mention of the requirement to control human impacts on, and interactions with, populations of nesting birds, seals, whales, corals and live molluscs. Inclusion of the explicit ability of the Authority to declare any individual species as protected in marine parks was suggested. The prohibition of removal of organisms from rock platforms was suggested.

Lower catch limits for commercial and recreational fishing were suggested, as were seasonal closures on SCUBA diving to provide for the reproduction of certain algal species.

#### **Comment**

The majority of these matters can be dealt with in Zoning Plans or via Permits under the Regulation as it stands, with the exception of prohibition on the taking of coral (an existing provision of the SIMP Regulations).

### **2.4 SPEARFISHING**

Spearfishing was viewed by many respondents as selective and therefore environmentally responsible, and by others as unacceptable in marine parks.

Spearfishers felt that any proposal to restrict their activities to a select species list in Refuge Zones would be discriminatory and that any restriction imposed should be based on a comprehensive resource assessment.

#### **Comment**

While selective harvesting of size classes and species by spearfishing may lead to negative impacts on biodiversity, the small size of the spearfishing community indicates that catches by spearfishers vs line fishers is likely to be minimal. If a species or size class requires protection, it would be more effective to limit taking by all sectors than to limit taking only in a small sector of the fishery.

The intent of the Regulation is to treat all sectors equally (although there may be some catch allocation as a side-effect of Zoning Plans) and manage the impacts of activities, as evidenced by the equality given to commercial and recreational sectors under the Regulation. It therefore is consistent with the Regulation intent to include spearfishers with other recreational fishers.

If the Regulation was amended to reflect the foregoing, it would still be possible to either incorporate all-encompassing prohibitions on species or size classes, or to apply selective species lists for particular sectors, such as spearfishing, within the Zoning Plan. Amendment

at this stage is likely to make the future application of select species lists for spearfishing may be more difficult to negotiate.

Comments under Section 12 below are also relevant.

## **2.5 RECREATIONAL FISHING**

Submissions generally promoted the continuation of recreational fishing in all zones if sustainability was not at risk. Licensing of recreational fishers was suggested.

### **Comment**

Regulation provides adequately for recreational fishing. Other comments (2.2 Spearfishing, above; Sections 12, 16, 25, 26, below) are also relevant.

## **2.6 COMMERCIAL FISHING**

General comments were of two types. Firstly there was a strongly expressed view that historical patterns of ecological sustainable commercial fishing should be able to continue and accommodated in Zoning Plans. The transfer of effort to areas outside marine parks with possible negative impacts was cited as one reason to stick with the status quo.

An alternative representation was made that commercial fishing is incompatible with marine parks and should be prohibited.

### **2.6.1 Aquaculture**

Aquaculture generated 18 submissions. A range of views were expressed, from the requirement to actively provide for aquaculture to its incompatibility with marine parks.

A number of submissions suggested that intensive aquaculture be prohibited and that aquaculture be limited to extensive operations in the General Use Zone only.

Other submissions highlighted the need for existing aquaculture operations to continue.

### **2.6.2 Baitfishing**

The tuna bait fishery generated three submissions all highlighting the need to regulate or prohibit this activity in marine parks, as the submission providers felt that the fishery was too loosely regulated and incompatible with marine parks. The potential for this fishery to impact negatively on penguin numbers was highlighted. The need to provide for purse-seining in Refuge Zones was raised as an issue.

### **2.6.3 Beach Hauling**

Beach hauling generated 8 submissions. Opinion was equally weighted between continuation of existing beach hauling arrangements and the need to prohibit this activity in marine parks.

### **2.6.4 Trap and Line Fishing**

Lobster trapping generated strong attention, with the main issues the requirement for the Regulation to allow the continued ability to trap lobsters in Refuge Zones, and for continuation of trapping around headlands in SIMP.

The need to provide the ability to fish for pelagics, particularly in Refuge Zones, was raised in a number of submissions.

### **2.6.5 Trawling**

Trawling was seen as incompatible with ecological sustainability in all submissions raising this fishery as an issue (3). Suggestion was made to closely monitor it or prohibit it altogether.

#### **Comment**

Commercial fisheries are consistent with the Objects of the Marine Parks Act and Regulation if they are ecologically sustainable.

As aquaculture facilities are likely to impact on habitat, it may be advisable to prohibit aquaculture in Refuge Zones (with the exception of existing facilities). Impacts of intensive aquaculture require consideration and could be dealt with during the permit process.

Tuna bait fishing (purse-seining), beach hauling, lobster trapping and pelagic fishing should be treated on a case by case basis, as they may be ecologically sustainable in certain habitats. Pelagic fishing is currently allowed in Refuge and General Use Zones. Impacts on food sources of penguins, seabirds and mammals, impacts on local populations of target species and conflicts with other users and their recreational experiences may dictate the approach taken to these issues in formulating Zoning Plans.

Trawling is only permissible in General Use Zones. Trawling should be excluded from sensitive habitats through Zoning Plans and monitored under monitoring programs within the Operational Plan. Trawling should be scaled back if ecological sustainability is at question.

## **2.7 SHIPPING AND VESSELS**

Personal water craft (PWC - jetskis) were mentioned in ten submissions. All opposed their use or encouraged restrictions on use in marine parks for noise, pollution, wildlife impacts and personal safety reasons.

The need for Regulation to allow for rights of innocent passage was highlighted. The need for controls on shipping in environmentally sensitive areas was a common theme. Use of marine parks by the Navy was raised, both in promoting closer management ties and promoting its exclusion. The impact of Regulations on sailing races was queried.

#### **Comment**

PWC's will be a contentious issue for Zoning Plans. This and the majority of other issues are adequately provided for in current Regulation and will be dealt with in Zoning Plans or at the policy level.

Discussions below (2.8 Pollution Control and Development; Section 9; Section 19) are also relevant. The interests of the Navy may require clarification to make it clear that Defence legislation overrides the Marine Parks Act.

## **2.8 POLLUTION CONTROL AND COASTAL DEVELOPMENT**

### **2.8.1 Pollution Control**

The lack of provisions within the Regulation for management of water quality, litter, sewage disposal from vessels and adjacent terrestrial development, oil spills, harmful and toxic substances etc was a recurring theme (17 Submissions).

### **2.8.2 Development**

The capacity of the Regulation to control developments likely to impact on the marine park was seen as minimal. One submission promoted marine parks as limiting desirable development.

#### **Comment**

It is difficult for stakeholders to grasp the ability of the Authority to manage water quality and pollution issues under the Regulation. This issue needs to be clarified to enable marine park Zoning and Operational Plans to be developed. The issue of development adjacent to marine parks is dealt with in s.20 of the Marine Parks Act.

Detailed explanation of the powers to be delegated to the Authority under complementary Legislation (e.g. Marine Pollution Act; Protection of the Environment Operations Act) should be provided in the Explanatory Note.

## **2.9 RESEARCH AND MONITORING**

Submissions uniformly viewed research as a desirable (in one submission, mandatory) activity in marine parks. Research was seen as a priority for resourcing.

Permits for research need to be free of fees and flexible to allow activities otherwise prohibited in Sanctuary Zones (i.e. anchoring, causing harm to marine life). The provision of moorings specifically for research was seen as desirable.

#### **Comment**

Regulations currently flexible enough to allow for the suggested research requirements to be incorporated within Zoning Plans and permits.

## **2.10 REPRESENTATION ON ADVISORY BODIES**

A number of submissions requested membership on advisory bodies, particularly on the Marine Parks Advisory Council (Recreational boating, charter boat operators, Yachting Association of NSW, aquaculture, local residents).

Other submissions indicated that they did not feel adequately represented either sectorally, or by their sectoral representative, on Advisory Committees (Jervis Bay Divers Club, sailing clubs). The need to provide adequate representation for Aboriginal people was highlighted. The need for consultation to encompass individuals as well as clubs, committees etc was raised.

#### **Comment**

Advisory Council and Committee representation is not relevant to Regulations.

### **2.11 PERMIT FEES**

The issues of fees and charges was raised (15 submissions). Submissions ranged widely in tone, from no fees to be charged, to the fee schedule should be included in the Regulation. Overall the tone of submissions indicated that fees would be acceptable if they were charged according to a sliding scale with size of fee dependent on: the intensity of operator use of the park; the environmental impact of the operation; the level of profit generated by the operation (non-profit organisations and clubs exempt from fees); and that the government not double dip by charging for permits under multiple management regimes (e.g. Fisheries licences + marine park permit fees)

#### **Comment**

Should be dealt with at permit /fees and charges policy level. Discussions relevant to Sections 23 and 35 (below) also relate.

### **2.12 ABORIGINAL ISSUES**

Submissions (8) dealt with a range of issues. Building Aboriginal use (particularly fishing) and site protection into Regulations was strongly stated, including the use of Special Purpose Zones to provide for Aboriginal traditional use.

The potential interaction of the Regulation and successful Native Title applications was raised as an issue. Questions of the legality of the JBMP declaration were raised and the potential for native title claims over the water. It is important that some of these issues be addressed or concessions made in the Regulation for continued involvement of these people in the next stages of the planning process.

The need for appropriate consultation and Aboriginal representation on Advisory bodies was highlighted. The issue of Aboriginal joint management of marine parks was raised.

#### **Comment**

Many issues can only be dealt with at policy level (e.g. traditional use, joint management, fishing rights). Some issues may appropriate for consideration in Zoning Plans.

### **2.13 MARINAS**

Submissions were divided between making active provision for marinas and total prohibition.

#### **Comment**

The issue of marinas should be considered during Zoning Plan development for individual marine parks. Comments on Section 17 (below) also apply.

### **2.14 ACCESS**

Submissions indicated the need to maintain access for recreational and commercial fishing, particularly for beach-based activities and for beach launching of boats. Other submissions highlighted the need to control vehicles on beaches and rock platforms for ecological and safety reasons.



**Comment**

This can be dealt with via the Zoning Plans.

**2.15 PRECEDENCE OF LEGISLATION**

Submissions highlighted the overlap of a number of existing pieces of legislation and jurisdictions with marine parks management, in particular those concerned with management by Waterways, EPA, DLaWC, Department of Defence, NSW Fisheries, and NPWS.

**Comment**

It is not the intent of the Regulation or the Authority to duplicate existing arrangements, however, existing provisions will be built on where the need arises in relation to management of marine parks. Arrangements for coordinating management responsibilities would be developed and incorporated into Operational Plans and permit conditions.

**2.16 REGULATORY IMPACT STATEMENT (RIS)**

A number of submissions (13) commented on the RIS. In general it appears that stakeholders consider the RIS inadequate. Submission contributors largely felt that the RIS understated the impacts of introduction of the Regulation. Many submissions mirrored the position of Oceanwatch the RIS contains much unexplained jargon, does not accurately reflect the true cost to industry (e.g. commercial fishing, tourism) and government of implementation of the Regulation, and contains unsupported assertions of fact.

**Comment**

Some contributors (e.g. Oceanwatch) made detailed comment on the RIS and ignored the Regulation.

### **3. SECTION-SPECIFIC COMMENTS**

#### **Part 1 Preliminary**

#### **CLAUSE 3 . DEFINITIONS**

There were fourteen issues raised in reference to section 3. Definitions. Each was referred to once only except for a comment suggesting 'zone' be defined to include the benthos and the water column. The list issues raised followed by comments and recommendations for each are as follows:

***"Anchoring" needs to be defined***

Specifying anchoring to the benthos may be warranted as some forms of 'anchoring' such as sea anchors or drogues are unlikely to come in contact with the benthos.

***"Animal" as defined by the Marine Parks Act needs to include "dead animals or part thereof" to allow control of shell and shark teeth collecting etc***

Shell and shark teeth collecting can be controlled by referring directly to such animal products if required however the specification of "parts of" animal in the Regulation will strengthen the ability to manage activities.

- ***"extensive aquaculture" and "intensive aquaculture" need to be defined in terms of the scale and facilities required as well as by requirement for supplementary feeding***

The appropriate size of aquaculture facilities is likely to be a function of the size and nature of the habitats of a marine parks. Requirements of size should remain flexible and, if required, be controlled in the zoning plan. No amendment required.

- ***In the definition of "mooring", "waters bed" should read "sea bed"***

"Waters' bed" sufficiently described marine park benthos.

- ***Definition of "exotic" implies indigenous to any marine park***

Clarification is warranted to prevent transportation of organisms between marine parks.

- ***Corals need to be defined as "fish"***

Unanimous comment from the SIMPAC. The Fisheries Management Act definition refers to "... fish or other aquatic animal life..." without specifically referring to coral, coral is however covered by this definition.

- ***"harm" needs to include destroying or poisoning of animals***

'Destroying or poisoning' animals is covered under the existing definition of 'harm'.

- ***The definition of "harm" to animals exclude unintentional harm, e.g. accidental collisions with whales***

The proof of 'intention' may be difficult to achieve. The definition should remain flexible to enable case by case assess of such situations.

- ***Definition of "harm" needs to include fish feeding***

Whilst, in some instances fish feeding may cause harm, such activities are more appropriately controlled using methods other than regulation.

- ***“mooring” needs to include anchoring***

As the impact on habitat of these activities are likely to be different, management of each activity would be easier if the definitions were separate.

- ***Word 'activity' needs to be defined***

The lack of a definition for some types of activities resulted in difficulties in applying regulations under the Great Barrier Reef Marine Park, Act. A comprehensive definition is difficult to provide. The EP&A Act definition can be used as a guide.

- ***Definition of "take" needs to include "... animal and plant ..."***

The word “take” is referred specifically in the definition of harming an animal. The definition of harming a plant sufficiently covers ‘taking’ plants.

- ***“zone” should be defined as including the benthos and the water column***

The extent of a marine park is specified in the Act and the declaration of the park and includes the benthos and water column.

## **RECOMMENDATIONS**

### **Amend Clause 3.**

- **“exotic animal”:** Add the word “living” before the word “animal”. Change the words “to a marine park” to “to THE marine park”
- **“exotic plant”:** Change the words “to a marine park” to “to THE marine park”

### **Part 2 Marine Park Zones**

Comments referring to zones in general were largely specific to the zoning process and how zones should be applied in marine parks. One submission stated that the zoning process should be specified in the regulations.

The issue most commented upon under this topic was the need for zone boundaries to be easily identifiable. Three submissions expressed concern that the proposed zones could not protect migrating fish and two submissions referred to the need for a minimum zone size to be specified in the regulations.

One submission (JBMPAC) stated that the number of zones in the regulations were adequate, whilst three contradicted this by suggesting the addition of an intertidal zone, a total exclusion zone and a zone accessed by scientific permit only. Two referred to the current Recreation zone in the SIMP, one suggesting all recreation zones be converted to Refuge zones another expressing concern about the impact of displaced fishers under the Marine Park zoning system.

### **Comment**

Most of the general zoning issues raised will be addressed in the development of policy outlining a generic zoning process and zoning guidelines. Other issues such as locations and sizes of zones will be addressed in the development of zoning plans themselves and need not be included in the regulations.

The functions of the suggested additional zones can be dealt with through closures and under the current zones, in particular the Special Purpose zone.

## **Division 1 Zones in marine parks**

### **CLAUSE 5 ZONING PLANS**

Four submissions were made in reference to section 5. Two suggested that the regulations should include objectives of a zoning plan and proposed a set of objectives to that effect. One submission proposed that the regulations should specify that a marine park must include at least one sanctuary zone.

One submission expressed concern at the potential of zoning plans to totally exclude fishing from a marine park.

#### **Comment**

The broad objectives of a zoning plan are currently reflected in the Objects of the Act and are unlikely to need reiterating in the regulations. Fine scale objectives of a zoning plan are best addressed in Marine Parks policy on zoning guidelines.

It is considered that the regulations remain flexible and not specify size and number of zones. These issues are more appropriately addressed in the zoning process for each marine park.

## **Division 2 Sanctuary Zone**

General comments on Sanctuary zones were divided between specifying how sanctuary zones should be applied and the suggesting additional or fewer restrictions. Sizes specified for sanctuary zones were 'small'; 'large'; 'a high proportion of a marine park' 'at least 10% of a marine park' and '15% of state waters'. Submissions suggested that selection of sanctuary zones should be by 'scientific methods' only; others suggested that once selected, the size of a sanctuary zone cannot be revised downward.

Submissions for additional restrictions included, banning of transporting spear guns through sanctuary zones, speed and noise restrictions; banning of jet skis, jet boats, pre-certified dive training, and the banning of all activities except scientific research and education in sanctuary zones. Other submissions suggested bait collecting be allowed in Sanctuary zones and that all existing activities be allowed to continue whilst others suggested that no restrictions be placed on local residents.

Three submissions suggested that fishing restrictions in sanctuary zones may affect fishing rights under the Native Title Act.

#### **Comments**

The size of zones should not be prescribed in the regulations, but remain flexible enough to be addressed either in Zoning Guidelines or in operational plans. Implicit in the zoning process is the consideration of both scientific and socio-economic data and need not be specified in the regulations.

The regulations allow for additional restrictions to be placed on activities above those specified in any particular zone. Therefore they need not be included in the zone descriptions. The allowance for bait collecting in all zones (including Sanctuary zones) would be inconsistent with the objects of the Act, namely, to protect biodiversity. It is considered that sufficient provision is made for bait collecting in other zones.

The issue of the impact on Aboriginal fishing rights under Native Title needs to be investigated further.

## RECOMMENDATION

### Amend Clause 5

- Add 5 (3) “A zoning plan regulates activities with a marine park. For instance, a zoning plan may designate sites for activities such as anchoring or camping; impose catch restrictions (species, numbers, and size classes) on fish taken in the park; restrict operating methods for any activities (including fishing) or specify requirements for domestic animals within a marine park.”

## CLAUSE 6 OBJECTS OF SANCTUARY ZONE

The following issues were raised in submissions specifically on section 6 of the regulations:

- *Add to s.6(a): "... to protect an adequate and representative sample of each marine park"*

This issue will be addressed in a policy document on Zoning Guidelines in NSW Marine Parks and is unlikely to need specifying in the regulations..

- *6 (b) (i) should include 'commercial activities'*

Commercial activities are specified under the objectives of refuge zones and for consistency should be included in the objectives of Sanctuary zones.

- *6(b)(i) should be changed to "minimal damage" as even scuba diving has been shown to damage the habitat*

Whilst it is acknowledged that many activities allowable in sanctuary zone may cause habitat damage, a 'no damage' target should be maintained.

- *6 (b) (ii) should read non-destructive scientific research*

Whilst section 7 may address this issue, it is acknowledge that scientific research has the potential to be destructive. The Zoning and Operational Plans should discourage this type of research in a sanctuary zones. However as some research may require the taking of samples, setting up of quadrats etc which may cause harm to animals and/or plants, the Authority should maintain the ability to provide for this under permit..

## RECOMMENDATION

Amend 6(a) - insert the words “aboriginal and non aboriginal” before the words “cultural features”.

## CLAUSE 7 PROTECTION OF ANIMALS, PLANTS AND HABITAT IN SANCTUARY ZONE

The following issues were submitted in reference to section 7. Three submissions were made in reference to the discretionary powers of the MPA to allow animals, plants and habitat to be harmed or damaged:

- *Unless there is further clarification, delete the words "...except with the consent of the Authority" from section 7. Guidelines as to when exemptions could be granted need to be publicly exhibited*

The ability to provide for these activities during research etc. need to be maintained.

- ***“soil and sand” in 7 (c) needs to include “rocks and pebbles”***

‘Soil and sand’ is by no means a comprehensive description of habitat type or benthos, it is however given as an example.

- ***Position on the taking of dead shells, coral skeletons, shark teeth etc should be clarified to prohibit in Sanctuary Zones but allow in Refuge and General Use Zones***

Control of the taking of animal products may be addressed in zone plans

## **RECOMMENDATION**

**Amend 7 (c) Insert “shell” after “sand” on line 2**

## **CLAUSE 8 AQUACULTURE NOT PERMITTED IN SANCTUARY ZONE**

There were several submission outlining the benefits of aquaculture and others wishing to place restrictions on aquaculture in other zones, none specifically referred to aquaculture in sanctuary zones.

## **CLAUSE 9 Vessels to be anchored or moored only at designated sites**

There were twelve submissions specifying the need for the regulations to allow for anchoring in a sanctuary zone in the case of poor weather, or other emergencies. One submission also commented on the need for yachting race marshals to anchor in sanctuary zones. One additional submission emphasised the need for any Marine Parks mooring to be adequate for larger vessels as well as small vessels.

### **Comment**

It is likely that existing international shipping laws provide for the over-riding of anchoring restrictions in an emergency.

## **DIVISION 3 REFUGE ZONES**

The main comment received in reference to refuge zones generally was the inappropriateness of the zone’s name. Submissions from both Advisory Committees were received on this issue. Most submissions suggested that the name reflect the nature of the zone’s objectives, namely that of habitat protection.

Additional submissions referred mainly which activities should or should not be permitted in refuge zone. One of the most controversial issues being that of aquaculture. There was strong support for the banning of all aquaculture in Refuge zones (including the JBMPAC) with an equally strong representation for the need to allow for intensive aquaculture in a refuge zone.

The issue of allowing for traps and for beach hauling in refuge zones also had a strong representation in the submissions, with suggestions that the impact of nets is dependent upon the habitat which is fished and thus should not be a general restriction in refuge zone. One submission was received which specifically supported the banning of lobster pots in refuge zones.

## Comments

Changes to the zone's name should be considered in light of the strong representation on this issue. A name change reflecting the objectives of the zone will also assist the education of users and implementation of the zoning plan.

Given the strong representation against aquaculture in marine parks, it may be seen as inappropriate to change the regulations to provide for intensive aquaculture in Refuge zones. Aquaculture both extensive and intensive has been shown to affect habitat by increased nutrients and sedimentation, or their acting as fish aggregating devices which changes the local ecology in the immediate area of the device. In view of such changes, it is questionable whether this is consistent with the objects of a Refuge zone.

The impact of traps and beach hauling is dependent upon the habitat in which the activity is undertaken. Consideration should be given to allowing such activities to be controlled through the zoning process on location by location basis. This approach, however, is likely to be strongly criticised by some stakeholders who have singled out commercial fishing, specifically beach hauling as inappropriate in marine parks.

## RECOMMENDATIONS

- **Amend Division 2: Rename "Refuge Zone" to "Habitat Protection Zone". Change all reference to Refuge Zone to Habitat Protection Zone throughout the Regulation**

## CLAUSE 10 OBJECTS OF REFUGE ZONE

Comments relating specifically to section 10 were all in reference to the need to ensure that extractive activities in this zone provide only a minimal and sustainable impact or are more tightly controlled than is currently specified. Suggested changes outlined in submission were as follows:

- *Replace the words "low impact" with "insignificant impact" in section 10 (b), and "negligible" with "must not harm, damage, take or interfere with"*
- *In providing for activities in Refuge Zones, the terms "ecologically sustainable", "low impact" and "negligible impact" need to be defined in section 10 (b)*

Enforcement of activities in this zone and later assessment of permits/consent applications will be difficult without a definition of acceptable impacts etc. The Land and Environment Court has defined 'significance' so this may be a good term to use.

- *Section 10 (c) should be added: "The precautionary principle must prevail"*

The precautionary principle as specified in the Act is unlikely to need repeating in the regulations.

## RECOMMENDATION

- **Amend Clause 10(a) : - insert the words "aboriginal and non aboriginal" before the words "cultural features."**
- **Amend Clause 10(b) : - change the words "have a low impact" to "do not have a significant impact", and insert "have" after "and" on the last line.**

## **CLAUSE 11 PROTECTION OF PLANTS AND HABITAT IN REFUGE ZONE RECOMMENDATION**

- **Amend Clause 11 (c) : - insert 'shell' after 'sand' on line 2**

## **CLAUSE 12 Limited fishing activities in refuge zone**

Numerous submissions were received which directly referred to the activities permissible in section 12. Submissions from both Advisory Committees referred to the need to allow for the setting of lobster traps in certain habitats.

Almost half of the submissions received were form letters requesting changes be made to section 12 (a) to include the use of spears and spear guns and expressing objections to that method of fishing being singled out for restriction to a species list. There were three submissions which opposed this view and stated that spear fishing should be banned in marine parks and a further submission supporting the restriction of spear fishers to a species list. Other submissions state they had no objections to being restricted to species lists provided that consultation occurred during the lists' compilation.

Several submissions sought clarification on whether "a hook and line" restricted fishers to one hook and one line and suggested that the regulations provide detail on the types of hooks, lines and other equipment to be used. One submission suggested that 'squid jigging' be added to methods of fishing.

Several submissions referred directly to section 12 in their objections to the banning of beach hauling in refuge zones. Comments were similar to those discussed above under general comments on Refuge zones.

### **Comments**

For comments on the use of traps in a refuge zone, see above comments under the general refuge zone issues above. For comments regarding the singling out of spear fishing see section below on issues of spear fishing. In concert with Section 11, this section precludes the Authority issuing permits for the use of equipment other than that listed in Section 12. If a research project required say, the use of nets, this would not be permissible as the section currently reads.

12 (1) (a) may be seen as ambiguous in terms of number of hooks and lines allowable per person. In order to remain consistent with the Fisheries Management Act in terms of management through catch rather than effort, the description of 'limited fishing' under the regulations should not include restrictions on numbers of hooks and lines per person. Reference to 'hook and line' as acceptable fishing methods in a Habitat Protection zone adequately allows for 'squid jigging' in this zone.

For comments on beach hauling see general comments on Refuge zones above.

## **RECOMMENDATION**

- **Amend Section 12 (1)(a) & (b): - replace existing clauses (a) and (b) with the following**  
:



**“A person may, while in the Habitat Protection Zone of a marine park, take fish provided:**

- (a) the fish are taken by the use of hook and hand held line, by hand, by use of scoop net or landing net, by use of spear or speargun, or by any other method permitted by a zoning plan or approved by the Authority.**

#### **CLAUSE 13 Intensive aquaculture not permitted in refuge zone**

In addition to submissions outlined under General comments on Refuge zones above, there was one submission stating that section 13 should be amended to restrict the size of extensive aquaculture farms in a refuge zone.

#### **RECOMMENDATION**

- Amend Clause 13 : - Delete the work “Intensive” from the title. Change the wording of the clause to “Aquaculture is not permissible in a habitat protection zone of a marine park.”**

#### **Division 4 General use zone**

General comments on the General use zone included the need to restrict the size of aquaculture farms in the regulations, the need to allow for collection of weed and animals for bait and the need to allow for collection of dead shells.

#### **Comments**

As per comments above, any restrictions to the size of aquaculture farms should be made in zoning and operational plans or permits. The draft regulations currently provide for the collection of bait in a general use zone.

#### **CLAUSE 15 Protection of animals, plants and habitat in general use zone**

Concern was expressed in two submissions that section 15 does not appear to prevent the taking of corals and animal products such as shells and shark teeth.

#### **Comment**

Control of the taking of animal products may be addressed in zoning and operational plans or be generally prohibited by amending section 15 (c) by deleting specific references to sand and soil and specifying “all material occurring naturally within the zone”

#### **RECOMMENDATION**

- Amend section 15 (c) insert “shell” after “sand” on line 2.**

#### **CLAUSE 16 Limited fishing activities in general use zone**

One submission stated that section was difficult to understand. Several (3) submissions stated that no restrictions should be placed on fishing in a general use zone. Several submission sought to clarify whether aquaculture was permissible in a general use zone. One submission referred to the need to amend section 16 to specify aquaculture as well as fishing. One submission stated that this section should be expanded to include a description of how fish feeding in intensive aquaculture should be undertaken.

## **Comment**

In order to manage fishing in marine parks, the provision under section 16 should remain to enable control of catch or management if required. Whilst not explicitly stating that aquaculture is permitted in a general use zone, aquaculture's omission from the restricted activities implies its permission. Acceptable methods of fish feeding in intensive aquaculture farms are likely to vary between marine parks. Therefore any specification for this activity should be addressed in the zoning and or permits.

## **Division 5 Special purpose zone**

### **CLAUSE 17 Objects of special purpose zone**

One submission stated that the description of the special purpose zone is unacceptable without detail. Whilst another submission stated that section 17(a) should be amended to provide for the protection of geological features.

Most comments on section 17 referred to marinas. The comments varied in support of marinas stating they should be provided for under the regulations; others stated that marinas are inappropriate for marine parks and should not be provided for within the regulations. One submission commented that as currently drafted, the words "such as" allow for marinas.

One submission referred specifically to ability of special purpose zones to allow for Aboriginal traditional use including food gathering.

## **Comments**

The aim of special purpose zones are to provide for the management of features not adequately provided for under other zones. More detailed description of this zone may restrict its use and hence the ability to manage marine park specific issues. Further definitions are therefore unnecessary.

It is likely that geological feature are already provided for under 17(a) within the term "natural and cultural features" as is the provision for traditional use including food gathering.

The presence of marinas in marine parks should not be restricted by regulation. This flexibility would allow for the presence of existing marinas in newly declared marine parks and enable marina proposals to be examined on a case by case basis with reference to design and existing zoning plans. The specifications in 17(b) "... such as slipways, breakwaters and shipwrecks." should be removed to allow flexibility in applying this regulation.

It may be advisable to provide for management of activities as well as features and facilities e.g. to provide for management of traditional  
- or other use within Special Purpose Zones in addition to the management of features.

## **RECOMMENDATION**

- **Amend section 17 (a) add word "or" at the end of this subpara**
- **Amend section 17 (b) insert the words 'berthing facilities' after 'breakwaters' and place the**

### **Part 3 Regulation of activities in marine park zones**

#### **Division 1 General prohibitions**

##### **CLAUSE 18 Possession of animals or plants taken illegally or of equipment used to take animals or plants**

Several submissions were made in reference to section 18. Only one supported the intent of the regulation stating that the same regulations referring to the carrying of fishing or hunting equipment should apply in marine parks as in terrestrial national parks.

Most stated that allowances should be made for transiting marine parks whilst one submission suggested that section 18(c) clarify what an appropriate 'state' of the equipment should be. Several submissions expressed concern that the onus of proof that equipment is in a non-useable state rests with the fisher in a court of law. One submission suggested that the section 18 should specify who pays the court costs.

#### **RECOMMENDATION**

##### **Amend Clause 18 :-**

- **Insert 'or a zone of the marine park' after park on the first line and on the third line;**
- **Replace 'an' on the third line with 'the'**
- **Insert 'or by the zone plan' after 'Regulation ' on the fourth line.**

##### **CLAUSE 19 Damage etc to marine park moorings, signs and facilities**

Submissions on section 19 indicated no common theme. Comments included the need to consult with Waterways on the management of moorings; the need to be able to drop a marker buoy in an emergency to retrieve lost equipment; the need for the regulation to provide for the defence of accidental damage of a mooring; the requirement of the a definition for the term 'interfere'; and a comment stating that there should be no permanent moorings in JBMP.

#### **Comment**

Most of the issues raised are likely to be dealt with in the planning process or in the case of consultation with other departments, in general management policy.

Issues of emergency deployment of marker buoys, etc, may be addressed under the current wording of section 19 in that buoys can be placed with the consent of the Authority. A consent may be made in the operational and zoning plans allowing for the deployment of marker buoys provided they are retrieved within specified and reasonable amount of time.

Clarification of the term "interfere" may be warranted considering the maximum penalty allowable for this action.

#### **RECOMMENDATION**

- **Amend Clause 19: - Add the word "buoys" before words 'sign and facilities'**
- **Amend Clause 19 (e) - add new subclause worded as follows:  
'attach a vessel to any marker buoy owned or managed by the Authority'**

##### **CLAUSE 20 Exotic animals and plants**

Comments on section 20 appeared polarised with some submissions stating that fines were not severe enough for introducing exotic animals in marine parks whilst others (including SIMPAC) stated that provision should be made for non-indigenous bait and burley. Several

submissions commented on the difficulty in enforcing this regulation with reference to ballast water.

One submission commented on the apparent contradiction of section 20 by section 21 in its reference to domestic animals and stated that that this style of regulation is confusing. One submission stated the need for the regulation to provide for the removal of the exotic animals where necessary.

#### **Comment**

Whilst it is common practice to use live non-indigenous bait, the risk of introduction of disease and escape is likely to be too great to allow such bait use in a marine park. Dead bait, whilst potentially able to introduce disease is considered less of a threat (e.g. current pilchard die-off) and could be allowed for under the regulations. It is acknowledged that enforcement of section 20 is difficult in terms of exotic animals introduced with ballast water.

#### **CLAUSE 21 Domesticated animals**

Numerous submissions which referred to the presence of dogs in marine parks were received, including one from the SIMPAC. Only one referred to the need to restrict dogs on beaches whilst others suggested that sufficient restrictions, such as Local Government regulations already exist to control dogs on beaches. One submission suggested that the regulation specify a requirement for owners to remove their dogs' faeces from the marine park. Most submissions referred to section 21 as being too restrictive and stated that the requirement of permits should be removed.

#### **Comment**

This regulation will largely apply to dogs in the intertidal area and dogs onboard vessels. Comments regarding existing local government or National Parks legislation are valid and the intent of the marine park regulation is to complement rather than contradict existing regulation. Most issues raised are likely to be addressed in the zoning and operational plans.

No mention of permits for dogs is made in the regulation and the term 'consent' can be in many forms. This is an issue which marine park staff must convey to the public, as many submissions have highlighted the same misunderstanding across a number of different sections of the regulation.

Where existing legislation fails to address the issue of the owners responsibility of removing dog faeces, the regulation should specify such a requirement under section 21.

#### **CLAUSE 22 Organised research activities**

Once again, submissions on this issue were polarised with comments suggesting that research need not have a permit; outings for school groups and educational programs be provided for; and, other suggesting that similar requirements be placed on research undertaken for personal interest or enjoyment as the impacts are likely to be similar.

#### **Comments**

School excursions and education activities are not classed as research activities.

### **CLAUSE 23 Commercial activities**

A significant number of submissions made reference to section 23. Two expressed concern at the potential to over regulate SCUBA activities under this section. Along similar lines, one submission questioned whether consent would be required to place a 'for sale' sign on a moored boat. One submission suggested that non-profit functions should be exempt from paying fees and obtaining permits.

By far, most submissions referring to section 23 were critical of the requirement for consent to undertake commercial photography in a marine park. Many suggested that this regulation will be difficult to enforce. One submission emphasised the need to distinguish between photography that promotes the marine park and other commercial filming e.g. the making of a film. Four submissions commented that 23(2) should be removed to allow the Authority input into the management of commercial fishing.

One submission commented on the poor wording and structure of section 23 which results in ambiguity in whether the phrase "except with the consent of the Authority" applies solely to section 23(1)(c) or to 23(1)a to c. In addition, the sentence structure in 23(2) should be changed to remove any suggestion that the regulation is referring to the sale of fish in marine parks.

#### **Comment**

The many submissions referring to fees and permits may be premature as no mention is made of either in the regulation (although mention is made in the RIS). Issues regarding how commercial photography will be managed in marine parks should be addressed in guidelines outlined in operational and zoning plans. The type of consent required for this activity has not been decided. No recommendation for amendment has been made.

Commercial fishing is strictly controlled by the Fisheries Management Act, and the provision of consent for fishing under the marine parks regulations would be duplication of fisheries regulation. Adequate control of fishing activities in marine parks can be applied through zoning provision. Comments regarding the need to rephrase section 23 to make it grammatically correct and unambiguous appear valid.

#### **RECOMMENDATION**

- **Amend Clause 23 (2): - Replace the words 'for sale in a marine park' with 'from the marine park for the purpose of selling those fish.'**

### **CLAUSE 25 Organised sporting and recreational activities**

This section generated a large response (19 Submissions). Comments indicated concerns in relation to the impacts of s.25 on club activities (particularly fishing competitions); the process for obtaining a permit; the right to demonstrate; the potential for requiring multiple permission from different government departments; the waiving of permit fees for recreational and non-profit organisations; the need to ban spearfishing and line fishing competitions or to restrict them to general use zones.

The relevance of s.25(b) to conservation, and the consequent necessity for the section, was questioned.

### **Comment**

Matters relating to the process for obtaining permits, fees and charges, and recognition of other forms of permission need to be addressed in the Operational Plan or relevant policy documents.

The issue of fishing competitions needs to be addressed in Zoning Plan development. Competitions need to be assessed as part of the overall recreational fishing effort, and need to be ecologically sustainable.

Section 25(b) relates to the requirement for the Authority to “provide for public appreciation, understanding and enjoyment of marine parks”, and to the duty of care of the Authority for marine park users. This obligates the Authority to ensure public safety, to reduce conflicts between park users, and to provide and advise on services and facilities where appropriate. These requirements dictate the necessity for the Regulation to provide the ability for the Authority to manage such gatherings and events.

### **RECOMMENDATIONS**

- **Amend Clause 25 : - add the word ‘educational’ before the words ‘and recreational’ in the title.**
- **Amend Clause 25 (d) add new subclause worded as follows: ‘organise or conduct any educational program or activity involving the harming or taking of animals, plants or habitat.’**

### **ADD NEW CLAUSE**

*Title - Recreational use of motorised vessels and vehicles, and equipment*

*(1) A person may use a motorised vessel, vehicle or equipment for recreation in a marine park except where such use is prohibited by the zoning plan.*

*(2) A person must not use a motorised vessel or vehicle for recreation in a marine park in circumstances in which that use is prohibited in the zoning plan.*

### **CLAUSE 26 Camping or residing in marine park**

Comments on Section 26 dealt with the issues of moorings and with maintaining the ability to camp in the intertidal zone at fishing spots.

Comments concerning camping on moorings indicated that: overnight stays should not require permits; mooring when fatigued or for safety reasons should not require a permit; and that it was inconsistent to allow camping on private moorings as opposed to Authority owned or managed moorings.

### **Comment**

The majority of these issues relate to, and could be dealt with in the development of, Zoning and Operational Plans.

The definition of Authority “managed” moorings and facilities in 26(1) appears to need clarification. The operation of moorings will need to be resolved in the Operational Plan.

The offence of staying longer than overnight on a vessel without consent required changing to reflect the intent of this clause which was to prevent vessels attaching to Authority facilities

for longer than necessary to recover from fatigue or in an emergency. A period of twelve hours was seen as sufficient for this purpose. If attachment for a greater period of time was required, consent of the Authority could be sought.

## **RECOMMENDATIONS**

**Amend 26(1)(b): delete and reword as follows:**

**“attach a vessel to a mooring or other facility in a marine park that is owned or managed by the Authority for a period of more than twelve (12) hours, or”**

## **DIVISION 2 MARINE PARK CLOSURES**

Closures generated comment in eleven submissions.

Comments centred on the issues of provision by the Authority of reasons for closures; consultation with users and Advisory Committees prior to instituting closures and prior to their renewal; the use of closures only in emergencies; a general concern about the Authority having the power to institute closures at short notice, and the need to provide flexibility in compliance monitoring for users who may be unaware of a closure coming into force at short notice (e.g. by being at sea at the time).

### **Comment**

Closures provide management with the ability to respond rapidly if required and are a useful management tool. Use in emergencies only would reduce the usefulness of this tool for management of issues developing over longer time periods.

Consultation prior to closures being instituted is not practical if the closure must be applied quickly or in situations where announcement of a closure could defeat the purpose of the closure. Consultation should occur if at all possible. Procedures for this and for provision of reasons for closures and for flexibility in compliance monitoring may be dealt with via the Operational Plan or in policy.

### **CLAUSE 30 Offence provisions**

In relation to s 30(2), clarification was sought as to whether an offence related to each animal in possession, and that the inclusion of “plants” taken in contravention of a closure was necessary.

### **Comment**

The provision for each animal (or plant) to be classed as a separate offence seems probable. The requirement to include plants is supported.

## **RECOMMENDATION**

**Clause 30(2) be amended as follows: add the words “or plant” after the words “any animal”**

## **PART 4 Miscellaneous**

### **CLAUSE 31 Removal of persons from marine park**

Seven submissions were of similar tone and highlighted the potential abuse by Rangers of the powers of removal of persons, and that it would be difficult for a Ranger to foresee that a person was “likely to commit and offence”.

#### **Comment**

Marine Park Rangers must have adequate powers to control offenders and to prevent offences where possible. Their duty to “act in good faith” and with due care and discretion should be paramount in applying the Regulation.

### **CLAUSE 32 Penalty notice offences (also refers to Schedule 2)**

There appeared to be confusion in a number of submissions concerning Penalty Notices and Maximum Penalties. The Penalty unit was not understood by a majority of submission providers. As a result many comments which indicated that the penalties were too low appeared to believe that the Penalty Notice amounts were the maximum applicable to offences under the Regulation.

Penalty notices were considered too high by some, in that they would encourage offenders to defend the charge rather than pay the fine, thus tying up staff time in administration and court appearances for minor offences.

There was a feeling that infringements in Sanctuary and Refuge Zones should carry higher penalties than other offences.

#### **Comment**

Fines for penalty notices are consistent with the Fisheries Management Act and the NPW Act.

### **CLAUSE 34 Delegation**

Submissions (3) indicated that delegation should be in writing, that delegated persons should have and display appropriate identification, and that the type of persons and the limits to delegations should be specified.

#### **Comment**

The comments appear to apply to Marine Park Rangers and other staff in the field exercising powers on behalf of the Authority. This is already standard practice.

### **CLAUSE 35 Giving of consent by Authority**

Eight submissions considered consent an issue. Submissions generally requested that consent be given in writing; be subject to an open, accessible and accountable system; be open to appeal if consent is denied; be automatically granted if an activity is consistent with objects of the Act and Regulation; and be provided within a timeframe specified in the Regulation.



### **Comment**

While consent provisions need to be clearly stated, the process, guidelines for permit issue and timeframe could be dealt with in the Operational Plan or policy documents.

Provision for automatic granting of permits could lead to management difficulties. An example might be the precluding of the establishment of limits on numbers of participants in activities if this was warranted on ecological or safety grounds.

Provision of consent in writing is a necessary provision to avoid confusion and uncertainty.

Provision for appeal could be made available, either within the Regulation or the Operational Plan. While this will increase the staff workload, it provides for natural justice and could be specified to occur at the applicants expense to reduce vexatious applications.

### **RECOMMENDATION**

**Clause 35(1) be amended as follows:-**

**remove subclauses (a) and (b) and replace with the following:**

**“The consent of the Authority under this Regulation may be given in the form of a licence, permit, approval or other form of written authorisation.”**

### **CLAUSE 36 General defence**

The need for Marine Park Rangers to “act in good faith” in the exercise of their duties was raised, as was the right of an operator to exercise reasonable operational procedures in conduct of their business.

### **Comment**

Officers not acting in good faith will be acting outside of the exercise of their functions as marine park rangers and hence would not be protected by this clause.

Operators conducting business within the terms of permits are covered for this defence already.

## **APPENDIX 3**

**Letter from the Minister for the Environment,**

**the Hon Bob Debus, MP**

**dated 7 January 2000**



MINISTER FOR THE ENVIRONMENT  
MINISTER FOR EMERGENCY SERVICES  
MINISTER FOR CORRECTIVE SERVICES  
MINISTER ASSISTING THE PREMIER ON THE ARTS

3186

In reply please quote: NP 99/06887, 99/07981

Mr Peter Nagle MP  
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**RECEIVED**  
10 JAN 2000  
REGULATION REVIEW  
COMMITTEE

07 JAN 2000

Dear Mr Nagle

I refer to your letters of 5 October and 20 December 1999 concerning the *Marine Parks Regulation, 1999*. Please accept my apologies for the delay in providing a response.

The following information is provided in respect of the concerns raised in your letter.

Absence of zoning plans

As you are aware, the *Marine Parks Act, 1997* provides that regulations may be made relating to both marine parks generally and zoning plans for marine parks.

Regulations relating to marine parks generally apply to all marine parks and include matters such as licensing commercial activities, controlling the release of exotic animals and public behaviour.

Regulations relating to zoning plans for marine parks provide for managing, protecting and conserving a marine park through a zoning plan. The zoning plan specifies the management emphasis for each part of a marine park and the uses that will be permitted.

Each zoning plan will be appended to the regulation and will contain provisions that are unique to a particular marine park and to zones within that marine park. The process of preparing each plan requires extensive public consultation that will provide ample scope for considering how the enabling regulation will affect stakeholders.

Part 2 of the recently adopted *Marine Parks Regulation, 1999* seeks to provide a consistent basis for each zoning plan regulation. In particular, it defines the marine park zones that can be used in each subsequent zoning plan regulation.

It is intended that as each zoning plan regulation is created, it will be annexed to Schedule 1 of the *Marine Parks Regulation, 1999*.

## Regulatory Impact Statement

The three options presented were considered to represent three reasonable scenarios. It was decided to limit the analysis to these three options, because of the number of potential combinations and permutations of four zones and their components.

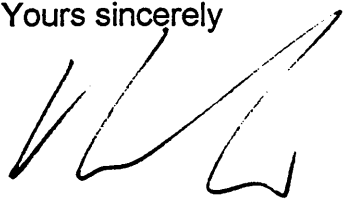
As this is enabling regulation providing for supplementary zoning regulations, it is not possible to establish the net benefit of its implementation.

The Act provides for extensive consultation in preparing zoning plans. This process is currently underway for the Solitary Islands and Jervis Bay Marine Parks where issues papers have been released for comment. There will be adequate opportunities for contentious issues to be considered and addressed before the zoning plan regulations are finalised.

The minimum of three months consultation required for zoning plans reflects the level of complexity and community interest in the management of individual marine parks. It is in the zoning plans that the major decisions are made about management, protection and use. In contrast, the Marine Parks Authority considered that one month was an adequate period of public consultation for the *Marine Parks Regulation, 1999*.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bob Debus', written in a cursive style.

**BOB DEBUS**

## **APPENDIX 4**

**Article published in the**

**National Parks Journal**

**December 1999**

*Slow progress with zoning the State's first three marine parks (Jervis Bay, Solitary Islands and Lord Howe) has put at risk the marine biodiversity of our region. Almost five years after Labor promised a "comprehensive system of marine national parks", and four years after the NPA and other groups demanded "at least 15% of the State's waters be zoned 'no take' areas by the year 2000", the area of NSW waters zoned 'fully protected' has not increased one bit.*

# SLOW PROGRESS WITH MARINE PARKS

*Tim Anderson\**

Three marine parks are now in place (under a weak Marine Parks Act and a minimalist Marine Parks Authority), but there will be no effective new protection until those parks are zoned (sanctuary, habitat, general use). Unlike a land national park, where the entirety of the park is a well understood 'no take' zone, a marine park has no such protection until and unless parts of it are zoned as 'sanctuary' areas. 'Refuge' zones provide a lesser level of protection where, for example, line fishing is allowed. The three new marine parks are now in a long process of consultation, before any such zones are established.

Glacial progress plans have also been floated for one large marine park in each of six identified bioregions in the state. So more marine parks are on the drawing board, but progress towards actual protection is glacial.

## **Jervis Bay options paper**

In August 1999, Jervis Bay Marine Park issued a 'Planning Issues and Options Paper'. While some welcome

proposals for marine protection are floated, it is fair to say that the role for sanctuary zones is fragmented and minimal. The options typically include proposals for management tools to deal with individual habitats and particular impacts. Sanctuary zones have been portrayed as one of those management tools.

Conservationist responses to this paper have demanded a central and a stronger role for large multi-habitat sanctuary zones. Very little weight has been given to protecting the rocky reef of Jervis Bay. This has to do with the pressures from rock fishers, who fish for gamefish in some scuba diving areas, alongside populations of rare and endangered fish such as grey nurse sharks, blue devil fish, seadragons and red indian fish. The Jervis Bay Marine Park options paper, however, contains not one proposed sanctuary zone



TIM ANDERSON

Zebra fish, Jervis Bay Marine Park

for any of the major scuba diving sites of Jervis Bay (the Docks, around Point Perpendicular, and north and east Bowen Island). Further, full implementation of whatever zones and management plans do come out of this uncertain process is another two years or so down the track.

The development of large, 'cross-habitat' sanctuary zones is intended to protect the integrity of biological processes across habitats, including for example the fish fry which migrate from seagrass to kelp to rocky reef. In Jervis Bay an example of such a multiple-habitat sanctuary zone might be one which links the reef of the Groper Coast with the seagrass beds to the north. On this principle there could well be a consolidation of sanctuary zone proposals, so that (for example) large sanctuary zones were created in the north (Hare Bay), south (East Bowen Island), east (Groper Coast), west (Plantation Point), and the Point Perpendicular areas of the Bay.

Large multi-habitat sanctuary zones would be consistent with the recent 'in-principle statement' adopted by the Advisory Council on Fisheries Conservation, on 1 September 1999: "The Advisory Council on Fisheries Conservation suggests that the Minister ensures that some sanctuary zones in marine parks be made large enough so as to cover several different interrelated habitats (eg seagrass, estuary, rocky reef, mudflat)."

### **Solitary Islands planning survey**

The Solitary Islands Marine Park preserves some earlier small sanctuary zones, from the 1991 Solitary Islands Marine Reserve. In late September 1999, the SIMP issued a summary of responses it had received to its planning survey earlier in the year. This summary noted a range of options, not organised in any particular form. Possible changes to the SIMR zones, noted in the summary paper, include expanding existing sanctuaries and refuges, and creating large 'strip' sanctuary zones, several kilometres wide. A range of other management options are canvassed, such as monitoring fixed moorings, preventing outfalls, controlled aquaculture (which may be licensed in marine parks) and monitoring the impact of boating and diving. There is strong pressure from commercial and recreational fishing to maintain their respective activity levels in the marine park. However, some commercial fishers have indicated a willingness to set aside some areas from intensive activities, such as prawn trawling. The next step will be an Issues and Options Paper within the next few months.

In its April 1999 submission to the SIMP, the NPA drew attention to its 1998 policy on zoning, which stresses comprehensive management, large multi-habitat sanctuary zones (of around 20 square kilometres), special protection measures, a transparent consultation process and accessible and sustainable recreational and commercial fishing. The NPA called for two types of sanctuary zones: (i) Special Area sanctuaries, designed to protect special features, and (ii) Representative Sanctuaries, a larger zone intended to preserve a representative sample of marine life, and

a viable and healthy marine ecosystem. These fully protected zones could be best arranged at the Solitaries as easily identifiable strips 3 to 10 km wide along the land and then out to the limit of State waters — a kind a 'zebra crossing' down the east coast. The zones must be large, so as to accommodate and protect spawning and breeding grounds. The regularity of the zones would contribute to the expected cross-fertilising benefit of a network of such zones.

### **The importance of 'no take' zones**

In the past, the State Government has claimed that over 100,000 hectares or around 10% of the State's waters (mostly in the Solitary Islands Marine Reserve) were protected. However, only 440 hectares, or 0.05% of State waters, are sanctuary zones which offer the full protection of a land national park. Some threatened marine creatures are now protected species under the Fisheries Act, but despite the marine park declarations, no more of their habitat has as yet been fully protected.

The NPA has for some years pushed for large 'no take' areas (sanctuary zones) which could help regenerate and restock surrounding areas, as well as preserve ecological processes within the 'no take' areas. We have been influenced by New Zealand scientist and campaigner Dr Bill Ballantine, who noted in 1991 that "the minimum area of biologically useful ['no take'] marine reserves is likely to be a few square kilometres, except where the entire system itself is smaller". All but one of the thirteen New Zealand marine reserves are now fully 'no take' zones, and the odd one out (the Poor Knights) is in the process of banning all fishing. The New Zealand experience has demonstrated that there are very direct commercial, as well as environmental benefits, from significant 'no take' reserves. A great majority of commercial fishers around the marine park at Leigh Marine Reserve (near Auckland) now express their wish to see more such marine reserves.

In 1995 a group of nine marine scientists — including Dr Callum Roberts, Dr Bill Ballantine and Dr Colin Buxton — found that "marine fisheries reserves (sanctuaries, no take refuges) if well placed and of the appropriate size, can achieve many of the goals that fishery management has failed to achieve using conventional methods." The international evidence is that exploited fish stocks will recover in large no take zones, and spawning biomass will be rebuilt. Marine national parks are not a threat to responsible and sustainable fisheries. There will be resistance from user groups, but fishers who recognise the nursery and restocking potential of substantial reserves will see the benefits.

The critical need for substantial 'no take' zones can be summed up in this way: people can exploit the resources of the sea in most places, but there must be some areas set aside where they cannot. There is enormous support for land national parks — people are not stupid; they will also support fully protected marine parks, in time.

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