

Regulatory Impact Statement

Proposed Marine Parks Regulation 2009



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Public Consultation Draft: Proposed Marine Parks Regulation 2009

Making a submission

The Marine Parks Authority welcomes written submissions on this Regulatory Impact Statement and the proposed Marine Parks Regulation 2009. Submissions will be accepted until 5pm on **12 June 2009** and should be sent via email, post or fax to the addresses below.

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This Regulatory Impact Statement is also available on the Marine Parks Authority website at www.mpa.nsw.gov.au.

Executive summary

Provisions of the Marine Parks Regulation 1999 that do not relate to zoning plans will be automatically repealed on 1 September 2009 under the *Subordinate Legislation Act 1989*.

To implement recent amendments to the *Marine Parks Act 1997* and to meet the staged repeal requirements of the Subordinate Legislation Act, it is proposed to:

- remake those provisions of the Marine Parks Regulation 1999 that remain relevant to the management of marine parks, together with new provisions, as the Marine Parks Regulation 2009
- directly amend the Marine Parks Regulation 1999 so that it contains only provisions relating to zoning plans for marine parks and rename it the Marine Parks (Zoning Plans) Regulation 1999.

This Regulatory Impact Statement (RIS) assesses the proposed Marine Parks Regulation 2009 and describes the proposed Marine Parks (Zoning Plans) Regulation 1999. It also compares the Marine Parks Regulation 2009 with alternative options for achieving the objects of the Marine Parks Act. The options considered were:

- Base Case: the Marine Parks Act with no Marine Parks Regulation 2009
- Option 1: the Marine Parks Act with the proposed Marine Parks Regulation 2009
- Option 2: the Marine Parks Act with other existing regulations and non-regulatory instruments used as alternatives to the proposed Marine Parks Regulation 2009.

The costs and benefits of the options depend on their relative ability to achieve the objects of the Marine Parks Act. Costs and benefits to individuals and the community, business and government were examined for each option.

The assessment concludes that the benefits of Option 1, the proposed Marine Parks Regulation 2009, outweigh the costs. The proposed Regulation was assessed as the most practical means of achieving the objects of the Marine Parks Act compared with the alternatives of having no Regulation (the Base Case) or using other existing regulations and non-regulatory instruments where available (Option 2).

Compared with the Base Case and Option 2, Option 1 (the proposed Marine Parks Regulation 2009) is likely to result in a number of environmental and administrative improvements, including:

- more effective protection of marine biodiversity and ecological processes
- a greater focus on ensuring the use of marine parks is sustainable
- regulations that support compliance with the Marine Parks Act
- greater clarity in the regulations that facilitate commercial and recreational activities in marine parks and increased compliance by marine park users
- better procedures for applications for permits, assessment of applications and the management of permits
- an increase in the powers of marine park rangers to manage visitor use of parks in a safe and sustainable manner
- more effective, efficient and transparent management of the marine parks system
- greater enjoyment of marine parks by visitors.

The proposed Regulation is expected to have a minimal impact on individuals and communities, businesses and government compared with the Base Case and Option 2. Any impacts would be proportional to achieving the objects of the Marine Parks Act.

In drafting the proposed Regulation, due diligence was taken to improve the clarity and consistency of provisions and to align it with other relevant statutory instruments where practicable.

The assessment of the Regulation was carried out under the Subordinate Legislation Act and applied the NSW Government's Better Regulation Principles. It demonstrates the NSW Government's commitment to simplify the reform or consolidation of existing regulation.

1. Introduction

Amendments to the *Marine Parks Act 1997* in mid-2008 introduced clear procedures for reviewing and amending marine park zoning plans. These amendments also provided that a regulation containing only provisions relating to zoning plans would not be subject to staged repeal under section 10 of the *Subordinate Legislation Act 1989*.

These amendments mean that provisions of the Marine Parks Regulation 1999 that do not relate to zoning plans will be automatically repealed on 1 September 2009 under the Subordinate Legislation Act.

To implement the amendments described above and to meet the staged repeal requirements of the Subordinate Legislation Act, it is proposed to:

- remake those provisions of the Marine Parks Regulation 1999 that remain relevant to the management of marine parks, together with new provisions, as the new Marine Parks Regulation 2009 (see the Public Consultation Draft)
- directly amend the Marine Parks Regulation 1999 so that it contains only provisions relating to zoning plans for marine parks and rename it the Marine Parks (Zoning Plans) Regulation 1999 (see Schedule 2 in the Public Consultation Draft).

1.1 Scope, purpose and structure of the Regulatory Impact Statement

This Regulatory Impact Statement (RIS) assesses the establishment of the proposed Marine Parks Regulation 2009 and also describes the proposed Marine Parks (Zoning Plans) Regulation 1999.

The RIS considers the potential impacts, including economic, of the proposed Marine Parks Regulation 2009 on individuals and the community, business and government. It examines whether the proposed Regulation will provide a net benefit to the community and be the most effective means of achieving the objects of the Marine Parks Act, compared with alternative options.

Structural changes, such as the renumbering of clauses, and direct amendments to regulations do not require a RIS. However, this document describes the proposed amendments to the Marine Parks Regulation 1999 (to be renamed the Marine Parks (Zoning Plans) Regulation 1999) as background information.

The Subordinate Legislation Act provides for the repeal of regulations and other statutory rules five years after their commencement. Regulations due for repeal may:

- be allowed to lapse
- be remade in their original form or an amended form
- have their repeal postponed if exceptional circumstances exist.

Staged repeal of the Marine Parks Regulation 1999 was postponed on five occasions to allow for amendments to be made to the Marine Parks Act. These amendments introduced important provisions for reviewing and amending marine park zoning plans, enabling plans to be reviewed on a suitable timetable, rather than all at the same time. These amendments have also greatly simplified the remaking of provisions of the Marine Parks Regulation 1999.

A RIS must include:

- a statement of the objectives sought to be achieved and the reasons for them
- an identification of the alternative options by which those objectives can be achieved (whether wholly or substantially)

- an assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance
- an assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance
- an assessment of which of the alternative options involves the greatest net benefit or the least net cost to the community
- a statement of the consultation program to be undertaken.

Where possible, costs and benefits should be quantified. Where this is not possible, the anticipated impacts of the proposed regulation and the alternative options should be described to allow as clear a comparison of costs and benefits as possible.

Section 2 of this RIS describes the legislative framework for marine parks and the proposed Regulation, Section 3 analyses the proposed Regulation and alternative options, including their impacts, and Section 4 provides a conclusion.

1.2 Consistency with the Better Regulation Principles

Regulations are also required to comply with the following NSW Government Better Regulation Principles:

- the need for government action should be established
- the objective of government action should be clear
- the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- government action should be effective and proportional
- consultation with business and the community should inform regulatory development
- the simplification, repeal, reform or consolidation of existing regulation should be considered
- regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

Significant regulatory proposals require a Better Regulation Statement to be prepared. However, the proposed Regulation is not considered to be a significant proposal because:

- it does not involve introducing a major new regulatory initiative
- it will not have a significant impact on individuals, the community or a sector of the community
- it will not have a significant negative impact on business
- it will not impose a material restriction on competition
- it will not impose any significant administrative costs on government.

This RIS will demonstrate the application of the Better Regulation Principles.

1.3 Consultation

Preliminary consultation with the Marine Parks Advisory Council was undertaken to provide information to stakeholders and seek their feedback prior to public exhibition of the proposed Regulation. The Council, which is constituted under the Marine Parks Act, represents marine

park stakeholder groups. Feedback to date has not identified any major issues with the proposed Regulation.

A broad range of stakeholders could potentially consider themselves affected by the proposed Regulation, including many recreational user groups, conservation groups and businesses. The most appropriate means of consultation with such a wide range of stakeholders is through the required public exhibition of the proposed Regulation and RIS. Further advice from the Marine Parks Advisory Council will be sought in finalising the proposed Regulation.

The Marine Parks Authority welcomes written submissions from interested parties and will carefully consider all matters raised during the public exhibition period.

A notice calling for submissions from the public will be published in the *NSW Government Gazette*, *The Sydney Morning Herald* and key regional newspapers in areas near marine parks.

2. Legislative framework for marine parks

2.1 Marine Parks Act 1997

The *Marine Parks Act 1997* provides for the establishment of marine parks for the primary purpose of conserving marine biological diversity. The Act commenced in August 1997 and six marine parks have since been established, zoned and managed under the Act at Batemans, Cape Byron, Jervis Bay, Lord Howe Island, Port Stephens–Great Lakes and Solitary Islands. Together the parks include about one-third of NSW marine waters.

The objects of the Act are:

- (a) to conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks
- (b) to maintain ecological processes in marine parks
- (c) where consistent with the preceding objects:
 - (i) to provide for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks
 - (ii) to provide opportunities for public appreciation, understanding and enjoyment of marine parks.

Provisions of the Act include:

- the declaration of marine parks
- regulation of activities in marine parks
- zoning plans
- development in and adjacent to marine parks
- marine park closures
- operational plans
- establishment and functions of the Marine Parks Authority, Marine Parks Advisory Council and local marine park advisory committees
- enforcement
- finance.

Activities in marine parks are managed by direct regulation and through zoning plans. The Act provides for a regulation that may make provision for, or with respect to, the management, protection and conservation of marine parks. The Act also contains detailed procedures for making, reviewing and amending zoning plans.

2.2 Other legislation

In addition to the *Marine Parks Act 1997*, other legislation applies in marine parks, including:

- *Crown Lands Act 1989*
- *Fisheries Management Act 1994*
- *National Parks and Wildlife Act 1974*
- *Protection of the Environment Operations Act 1997*
- *Threatened Species Conservation Act 1995*.

2.3 Marine Parks Regulation 1999

The Marine Parks Regulation 1999 contains provisions concerning:

- marine park zones
- general prohibitions that regulate activities across all marine parks
- consent procedures
- zoning plans
- a range of miscellaneous matters, including the powers of rangers and penalty notice offences.

Part 2 of the Regulation allows for the establishment of four types of marine park zones: sanctuary zones, habitat protection zones, general use zones and special purpose zones. It also outlines the objects of each zone, how they protect plants, animals and habitats, and limitations on activities.

Each marine park in NSW has a zoning plan that is contained in Schedule 1 of the Regulation. Zoning plans divide each marine park into different zones and set out the activities permitted in each zone.

The provisions of zoning plans work in concert with the general prohibitions in Part 3 of the Regulation that regulates activities across all marine parks.

Penalty notice offences and associated penalties are listed in Schedule 2 of the Regulation.

2.4 Marine Parks Amendment Act 2008

The *Marine Parks Act 1997* was amended primarily to establish clear procedures for reviewing and amending marine park zoning plans. The amendments also:

- provided that a regulation containing only provisions relating to zoning plans for marine parks would not be subject to staged repeal (noting that processes for reviewing and amending zoning plans were incorporated into the Marine Parks Act)
- provided that a marine park zoning plan would not require a RIS on the basis that the extensive consultation undertaken while making and amending zoning plans is a statutory requirement of the Act
- revised procedures for making marine park operational plans, which are now developed by the Marine Parks Authority with input from the local marine park advisory committees
- provided that operational plans could be amended or replaced at any time, but must be reviewed as soon as practicable after any major changes to, or replacement of, a zoning plan
- expanded the powers of the Marine Parks Act to regulate both aircraft movement in or over marine parks and the possession of animals, plants and materials taken from marine parks.

The Amendment Act also introduced a number of other relatively minor changes relating to:

- the regulation of activities in marine parks
- the relationship of the Marine Parks Act with other legislation
- the Marine Parks Advisory Council and Marine Parks Advisory Committees
- maximum penalties.

2.5 Proposed Marine Parks Regulation 2009

It is proposed to remake those provisions of the Marine Parks Regulation 1999 that remain relevant to the management of marine parks as the new Marine Parks Regulation 2009.

The proposed Marine Parks Regulation 2009 will contain all regulatory matters relating to marine parks other than zoning plans and associated provisions (see the Public Consultation Draft). The Regulation will apply to all marine parks in NSW and will be subject to staged repeal under the *Subordinate Legislation Act 1989*.

The proposed Regulation contains provisions regarding:

- the granting of Ministerial consent for activities in marine parks
- forfeiture offences
- the functions of marine park rangers and the Marine Parks Authority
- the Marine Parks Advisory Council and advisory committees
- offences under the Act and Regulations for which penalty infringement notices may be issued and the fines payable under these notices
- the avoidance of double jeopardy
- an exemption for activities of the Australian Defence Force
- savings and formal matters.

The bulk of provisions in Part 2 of the proposed Regulation address the granting of Ministerial consent for activities in marine parks. These provisions remake Part 3A of the Marine Parks Regulation 1999 with minor amendments. Clauses have been reordered and three assessment criteria under clause 31 have been removed (subclauses (f), (g) and (k)). It is proposed to omit subclause (f) as consideration of the natural resources of marine parks is already addressed by other assessment criteria, the objects of the *Marine Parks Act 1997* and the objects of zones. Similarly, cultural heritage is addressed in the objects of zones, so it is proposed to omit subclause (g). Subclause (k) is to be omitted as it is too broad in scope to be practicable. Consent for activities that will have minimal impact on the biodiversity, use or enjoyment of the park (including educational or research activities – clause 8(2)) need not consider the assessment criteria.

Under clause 20, consent procedures include powers to restrict the number of permits issued. No fees are proposed for obtaining consent (permits).

A new provision under clause 28 of the proposed Regulation enables members of local marine park advisory committees to hold office for more than eight years if, in the opinion of the Ministers, no other person is available to adequately represent their interests. This should assist in maintaining advisory committees in small communities, such as Lord Howe Island, and in sourcing committee members, such as marine scientists, from specialised stakeholder groups.

Clause 29 introduces new provisions governing the seizure and forfeiture of items in marine parks. The Marine Parks Act applies the enforcement provisions of the *Fisheries Management Act 1994* to marine parks, including the seizure of items such as fishing gear in relation to marine park offences. However, the seizure of boats and vehicles used in commercial fishing activities is only possible for offences declared in a relevant regulation to be forfeiture offences. Clause 412 of the Fisheries Management Regulation currently lists forfeiture offences, including offences in aquatic reserves, but not offences in marine parks.

The provisions proposed in clause 29 would define forfeiture offences for marine parks, allowing marine park rangers to seize boats and vehicles in relation to these particular offences.

The proposed Regulation identifies the following marine parks offences as forfeiture offences:

- offences relating to marine park closures under section 20G(1) or (2) of the Marine Parks Act
- contraventions of the proposed Marine Parks Regulation 2009 or the Marine Parks (Zoning Plans) Regulation 1999, which are designated as:
 - serious offences under section 17A of the Marine Parks Act, including those relating to protected species and the protection of animals, plants and habitat in a sanctuary zone
 - offences relating to the protection of animals, plants and habitat in habitat protection zones, general use zones and special purpose zones, and the possession of animals, plants or equipment used to take animals or plants.

The main effect of these changes is that boats or vehicles can be seized where:

- they are being used in illegal commercial fishing activities (regardless if undertaken by licensed commercial fishers), *and*
- a forfeiture offence (as described above) is being undertaken in a marine park.

If an offender is convicted, the Court may then consider ordering the forfeiture of the seized boats and/or vehicles.

These new provisions provide a potential deterrent to anyone seeking to engage in illegal commercial fishing activities in marine parks. They are equivalent to those that have been successfully applied since January 1995 under fisheries management regulations. For example, offences against section 8 fishing closure notifications under the Fisheries Management Act are already forfeiture offences under clause 412 of the Fisheries Management (General) Regulation 2002.

The seizure of items in marine parks would be implemented under a suitable policy framework and would likely require authorisation by a senior government officer. This approach is currently implemented for similar seizure powers under the Fisheries Management Act.

The fines payable for a penalty infringement notice for bringing any domesticated animal into a marine park without Ministerial consent or leaving a domesticated animal unattended in a marine park have been set at \$300 (clauses 22(1)(a) and (b) and Schedule 1) to align with similar offences under the *Companion Animals Act 1989* and its Regulation (section 14(2) – \$330) and *National Parks and Wildlife Act 1974* and its Regulation (section 56(1)(e) – \$300). These fines were previously set at \$200.

A new penalty notice offence has been added for possession of an animal or plant in a part of a marine park where this is prohibited by the park's zoning plan (Schedule 1, clause 19(1A)). The fine payable for a penalty infringement notice is \$500, the same amount for a similar offence of possession of any animal or plant that has been taken in contravention of a provision of the Marine Parks Regulation 1999 (clause 19(1)).

2.6 Proposed amendments to the Marine Parks Regulation 1999

It is proposed to directly amend the Marine Parks Regulation 1999 so that it contains only provisions relating to zoning plans for marine parks and rename it the Marine Parks (Zoning Plans) Regulation 1999.

The Marine Parks (Zoning Plans) Regulation 1999 will primarily include provisions relating to zoning plans for marine parks, including the objects of zones, and zoning plans for each marine park (see Schedule 2 in the Public Consultation Draft).

The key structural changes are that the objects of zones will be grouped (Schedule 2[8], clauses 5A to 5D) and that zoning plans will be set out as separate parts within the Marine Parks (Zoning Plans) Regulation 1999, rather than in a schedule (Schedule 2[8], clause 5; Schedule

2[24]). This should aid in interpretation of the Regulation. No substantive changes are being made to zoning plans themselves (i.e. the contents of Parts 2 to 7 of the Marine Parks (Zoning Plans) Regulation 1999).

The substantive changes proposed to the Marine Parks Regulation 1999 are:

- a revision to the objects of habitat protection zones (Schedule 2[8], clause 5B)
- a similar change for consistency to the consent clause regarding protection of animals, plants and habitat in habitat protection zones (Schedule 2[11])
- enabling the ability to grant consent for the taking of fish for traditional use in habitat protection zones (Schedule 2[13]).

Under clause 10 of the current Marine Parks Regulation 1999, the objects of habitat protection zones are:

- (a) to provide a high level of protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) 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, do not have a significant impact on fish populations within the zone and have a negligible impact on other animals, plants and habitat.

Under clause 5B of the Marine Parks (Zoning Plans) Regulation 1999, the objects of habitat protection zones would become:

- (a) to provide a high level of protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) 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 and do not have a significant impact on any fish populations or on any other animals, plants or habitats.

This change should clarify the objects of habitat protection zones. It should also aid in the interpretation and application of objects by removing an unnecessary and potentially misleading distinction between activities with no significant impact on fish populations and those with a negligible impact on animals, plants and habitat. The current provision implies a difference that does not exist in practice. It is the significance of the impact, rather than how small (negligible) it is in absolute size, that is relevant to providing a high level of protection to a habitat protection zone (as set out in the objects of habitat protection zones).

The objects of habitat protection zones are interpreted and applied in making, reviewing and amending zoning plans, for marine park closures and in determining consent (permits) for proposed activities in habitat protection zones. The change to the objects of habitat protection zones is expected to aid interpretation and application of the objects for these purposes.

‘Traditional use’ has been added to the limited number of reasons for which the Minister may consent to the taking of fish from habitat protection zones (over and above fishing activities already permitted by the zoning plan or the Marine Parks Regulation). This corrects a previous oversight, noting that similar provisions were previously made for the taking of fish from general use zones (clause 16(4)) and special purpose zones (clause 18B(3)), and for harming plants, animals (other than fish) and habitat in habitat protection zones (clause 11(2)(a)), general use zones (clause 15(2)(a)) and special purpose zones (clause 18A(2)(a)).

2.7 Objectives of the proposed Regulation

The objective of the proposed Marine Parks Regulation 2009 is to assist in achieving the objects of the *Marine Parks Act 1997*.

The proposal to:

- remake those provisions of the Marine Parks Regulation 1999 that remain relevant to the management of marine parks, together with new provisions, as the Marine Parks Regulation 2009
- directly amend the Marine Parks Regulation 1999 so that it contains only provisions relating to zoning plans for marine parks and rename it the Marine Parks (Zoning Plans) Regulation 1999

was developed according to the following key principles:

- improve the structure of the resulting regulations
- consolidate provisions relating to zoning plans for marine parks into the Marine Parks (Zoning Plans) Regulation 1999
- make no substantive changes to zoning plans for marine parks
- introduce new powers into the regulations as appropriate.

It is anticipated that general provisions relating to zoning plans (other than the objects of zones) at Part 1, Division 3 of the Marine Parks (Zoning Plans) Regulation 1999 will be progressively included within the zoning plan for each marine park when and if zoning plans are made, amended or replaced. This allows for a suitable and timely approach to public consultation on each draft zoning plan (in accordance with the Marine Parks Act). Over time, each zoning plan will become self-contained by including the regulations specific to the individual marine park.

3. Assessment of impacts

The following options are considered in this Section of the RIS:

- Base Case: the *Marine Parks Act 1997* with no Marine Parks Regulation 2009
- Option 1: the Marine Parks Act with the proposed Marine Parks Regulation 2009
- Option 2: the Marine Parks Act with other existing regulations and non-regulatory instruments as alternatives to the proposed Marine Parks Regulation 2009.

For all options, it was assumed that the proposed Marine Parks (Zoning Plans) Regulation 1999 would be made by direct amendment of the Marine Parks Regulation 1999.

The Base Case and Options 1 and 2 are described and examined in terms of their economic impacts on individuals and the community, businesses and government. The economic impacts of Options 1 and 2 are compared with those of the Base Case.

The description and assessment of each option has been grouped into the following categories:

- consent procedures
- compliance and penalties
- functions of rangers and the Marine Parks Authority
- Marine Parks Advisory Council and advisory committees.

The structure of the Regulation and minor changes to format, wording, paragraph ordering, and savings provisions are assumed to have no economic impacts and are not considered in this analysis.

3.1 Base Case: No Marine Parks Regulation 2009

The Base Case represents the situation that would apply if those provisions not related to zoning plans in the current Marine Parks Regulation 1999 lapsed on 1 September 2009 (i.e. only provisions relating to zoning plans continued to exist).

Consent procedures

Under the Base Case, there would be no regulatory provisions for consent procedures. These procedures are important in permitting a range of commercial and recreational activities that are otherwise generally prohibited without consent. There would be also be no provision for permit applications, assessment criteria for granting consent, or arrangements for managing permits (including the granting, variation, suspension, cancellation and surrender of permits).

Compliance and penalties

The Base Case would not provide for prescribed penalty notice offences. Consequently, marine park rangers would not have the power to issue penalty notices.

Provisions for the avoidance of double jeopardy would not exist under the Base Case.

Activities of the Australian Defence Force in marine parks would not be specifically exempted under the Base Case.

Additionally, under the Base Case there would be no general defence against conviction of an offence for anything done by a marine park ranger in the exercise of their functions or under direction from the Marine Parks Authority.

Functions of rangers and the Marine Parks Authority

Under the Base Case, marine park rangers would have no power to direct the removal of people, property or vessels with heavily fouled hulls from marine parks.

Similarly, the Marine Parks Authority would have no power under the Base Case to obtain information on commercial fishing operations or aquaculture from people carrying out these activities in marine parks.

Marine Parks Advisory Council and advisory committees

Section 32(2)(b) of the *Marine Parks Act 1997* provides that there should be two members on the Marine Parks Advisory Council to represent the interests of marine conservation: one expert in marine conservation and one nominated by a peak group or body generally recognised for its interest in conservation, as provided for in the Regulation. A regulatory provision specifying the peak group or body to represent marine conservation interests would not exist under the Base Case.

3.1.1 Impacts of the Base Case

The potential impacts on individuals, communities, businesses and government under the Base Case are discussed below.

Impacts on individuals and the community

Procedures for compliance and penalties under the Base Case would be expected to affect individuals and various sectors of the community in different ways. Law-abiding individuals would be little affected except where low levels of compliance reduced the effectiveness of biodiversity conservation in marine parks and limited the enjoyment of park users.

Without regulatory provisions enabling marine park rangers to issue penalty notices, individuals conducting illegal activities in parks could be prosecuted through a court action under the Marine Parks Act. This may result in higher penalties than those under the current penalty notice system for cases brought to court.

Individuals and the community would generally be negatively affected by a reduction in the quality of the marine environment that may result from the low level of compliance in marine parks expected under the Base Case.

Provisions for the avoidance of double jeopardy would not exist under the Base Case. As a result, it is less certain that a person would be protected from being convicted of an offence under both the Marine Parks Regulation 1999 and the *Fisheries Management Act 1994* (or regulations) for the same act or omission.

Impacts on business

The Base Case is likely to present significant uncertainties for businesses that provide services in marine parks. The absence of straightforward procedures for obtaining consent is likely to discourage new commercial activities in marine parks and the renewal of permits.

Without standard procedures, there is a risk that the assessment of applications for commercial activity permits will vary from park to park. Businesses operating in more than one marine park may also face differing permit conditions, potentially allowing certain aspects of an activity in one marine park but not another.

Businesses would be negatively affected by the low level of compliance in marine parks expected under the Base Case. Marine park rangers would have no power to direct the removal of people, property or vessels with heavily fouled hulls from marine parks. As a result, businesses that provide tourism and recreational services might find a deterioration of the marine environment on which their services depend. A reduction in environmental quality which lessens the quality of experience for visitors could have a significant impact on the economies of regions with marine parks. This would result in fewer visitors and lower visitor expenditure. Given the importance of tourism for many coastal areas of NSW, these impacts could have significant direct and flow-on effects on local income and employment.

Impacts on government

Under the Base Case, no regulatory provisions would exist to guide Ministerial consideration of applications for consent. Ministers and their delegates would, therefore, have no clear and consistent regulatory criteria for determining whether granting consent for a particular activity was consistent with the objects of the Marine Parks Act.

Without the necessary regulatory provisions in place, granting consent and ensuring compliance with permit conditions under the Base Case would pose significant administrative difficulties. There would be no specific power to issue permits for activities in marine parks. Without provisions for monitoring compliance with permit conditions, a disproportionate amount of time and resources might be needed to manage the impacts of activities to the detriment of other ongoing activities, such as scientific research and management of biodiversity.

Under the Base Case, activities of the Australian Defence Force would not be specifically exempted from provisions of the Marine Parks (Zoning Plans) Regulation 1999. This could present a significant challenge for State and Commonwealth officers in determining which legislation applies to these activities, and result in an unnecessary use of resources.

Under the Base Case, there would be no general defence against conviction of an offence for anything done by a marine park ranger in the exercise of their functions or under direction from the Marine Parks Authority. As a result, the NSW Government may incur significant legal costs to defend the exercise of functions by marine parks rangers.

The Marine Parks Act specifies that marine conservation interests should be represented on the Marine Parks Advisory Council by a member of a peak group or body. However, this peak group or body would not be defined under the Base Case. Arguably, the interests of marine conservation would not be well served by the lack of a legislative determination on which body should represent marine conservation interests.

3.2 Option 1: Proposed Marine Parks Regulation 2009

Option 1 involves making the proposed Marine Parks Regulation 2009, the provisions of which are described in Section 2.5.

3.2.1 Differences between the Base Case and the Marine Parks Regulation 2009

Differences between the Base Case and the proposed Regulation are outlined below.

Consent procedures

Consent procedures have only been in place under the Marine Parks Regulation 1999 since November 2004. A total of 22 clauses of the Regulation prohibit or restrict activities in marine parks, except where consent to carry them out has been obtained.¹

All 22 clauses would be retained in the Marine Parks (Zoning Plans) Regulation 1999, but consent (in the form of permits) would be assessed and issued or refused under the consent procedures in the proposed Marine Parks Regulation 2009.

Information for the oldest marine parks at Jervis Bay (Table 1) and Solitary Islands (Table 2) shows that permits have been issued under six of the possible 22 clauses that provide for consent between July 2005 and January 2009.

¹ Clauses 7(1), 8A(1), 11(1), 12(1), 13(1), 15(1), 16(1), 18A(1), 18B(1), 18C, 20, 22, 22A, 23, 24, 24A, 26, 27, 27A, 28, 29 and 30.

Table 1: Number of permits issued under the Marine Parks Regulation 1999 for Jervis Bay Marine Park

Clause	Description	2005–06	2006–07	2007–08	2008–09 (end Jan)
11(1)	Harm animals (other than fish), plants or habitat in habitat protection zone	0	2	3	0
23	Organised research activities	13	17	15	8
24	Commercial activities	24	26	27	21
26	Organised sporting, educational and recreational activities	8	10	12	10

Table 2: Number of permits issued under the Marine Parks Regulation 1999 for Solitary Islands Marine Park

Clause	Description	2005–06	2006–07	2007–08	2008–09 (end Jan)
11(1)	Harm animals (other than fish), plants or habitat in habitat protection zone	1	0	1	2
23	Organised research activities	4	2	4	4
24	Commercial activities	42	42	42	29
24A	Filming activities	0	1	0	0
26	Organised sporting, educational and recreational activities	27	33	33	38
27A	Fish feeding	1*	1*	1*	1*

* included in a permit for commercial activities (clause 24)

A clear majority of the permits issued for these two marine parks have been for commercial activities and organised sporting, educational and recreational activities. Also, the number of permits issued annually for different types of activities has remained reasonably steady over the past four years.

Compliance and penalties

The proposed Marine Parks Regulation 2009 defines forfeiture offences specific to marine parks for which boats and motor vehicles may be seized. These boats and motor vehicles may then be forfeited if so ordered by a court (see Section 2.5).

Marine park rangers would be able to issue penalty notices for certain offences, amounts for which are defined in the proposed Regulation. Revenue from penalty notice offences can be retained in the Marine Parks Fund (section 42 of the *Marine Parks Act 1997*).

The proposed Regulation includes provisions to avoid double jeopardy. These provisions make clear that a person cannot be convicted of an offence under both the Marine Parks Regulation 1999 and the *Fisheries Management Act 1994* (or regulations) for the same act or omission.

The proposed Regulation also provides an exemption for activities of the Australian Defence Force in marine parks and a general defence that anything done by a marine park ranger in the

exercise of their functions or done under the direction of the Marine Parks Authority is not an offence.

Functions of rangers and the Marine Parks Authority

The proposed Regulation allows marine park rangers to direct the removal of persons, property and vessels with heavily fouled hulls from a marine park. It also provides the Marine Parks Authority with the ability to require information on commercial fishing or aquaculture in a marine park.

Marine Parks Advisory Council and advisory committees

Provisions regarding the representation of marine conservation interests on the Marine Parks Advisory Council are contained in the proposed Regulation. These provisions, made for the purposes of section 32(2)(b) of the Marine Parks Act, establish the Nature Conservation Council as the peak group or body to represent the interests of marine conservation.

The proposed Regulation provides that a member of an advisory committee may hold office for more than eight years if no other individual is available to adequately represent the interests of a particular stakeholder group.

3.2.2 Costs and benefits of the proposed Marine Parks Regulation 2009

Differences between the Base Case and the proposed Regulation are considered below in terms of their economic impacts on individuals and the community, business and government.

Impacts on individuals and the community

Under Option 1, individuals and communities will have a clear idea of the criteria used to assess whether particular activities are permissible in marine parks, and under what circumstances an application for consent may be approved or refused. Applicants are therefore able to devote their time to applying for consent for activities that are likely to be approved. Under the proposed Regulation individuals would benefit from improved information about the permit approval process, whereas under the Base Case finding out how to obtain consent would be more time-consuming. Applicants would thus experience lower opportunity costs for their time under Option 1.

The Marine Parks Authority has published a policy and procedures document on permits (www.mpa.nsw.gov.au/pdf/MPA-Permit-Policy.pdf). The purpose of this policy is to ensure that the regulation of activities in marine parks through the permit process is fair, consistent and clear. The policy also aims to ensure that the regulation of activities in marine parks is consistent with the objects of the Marine Parks Act and the Marine Parks Regulation 1999. The policy will be updated following finalisation of the proposed Regulation.

To facilitate permit applications, the Authority provides permit application forms available at www.mpa.nsw.gov.au/pdf/Permit-Application-Form.pdf.

The guidance provided by both the policy and procedures document and application forms will build on information in the proposed Regulation, and help ensure that suitable information is provided as early as possible to facilitate the timely assessment of applications and subsequent issuing of permits. It is anticipated that the Marine Parks Authority will further streamline this process by integrating its permit system with any new licensing system for national parks that results from the National Parks and Wildlife Service Commercial Activity Licensing Review undertaken in mid-2007 (www.environment.nsw.gov.au/parkmanagement/CommercialTourLicensingReview.htm).

An improved compliance regime under Option 1 is expected to benefit law-abiding park users who would enjoy more effective biodiversity conservation. Individuals engaged in illegal activities in marine parks may be faced with penalty infringement notices for offences under Option 1, rather than court proceedings. This approach would result in lower costs for low-level offences, but more effective compliance. The costs imposed on individuals acting illegally in

marine parks under the penalty infringement process would be more effective as an immediate deterrent. The financial costs in fines and court time that would result from pursuing prosecutions through court proceedings, as would be the situation under the Base Case, would be reduced. Marine park staff would also spend less time on administration and in court under a penalty infringement notice system, with further cost savings.

The proposed Regulation includes provisions to avoid double jeopardy. These provisions make clear that a person cannot be convicted of an offence under both the Marine Parks Regulation 1999 and the *Fisheries Management Act 1994* (or regulations) for the same act or omission. This protection against does not exist under the Base Case.

Under the proposed Regulation, boats or motor vehicles used in illegal commercial fishing activities in marine parks may be seized under certain circumstances (see Section 2.5). If convicted, offenders may face court orders for the forfeiture of the seized boats or vehicles. The exercise of these powers by marine park rangers could impose significant costs on the owners of the equipment seized or forfeited in several ways: from the revenue foregone while the assets are impounded, the potential capital value of the assets if forfeited, incurred court costs, and time spent in responding to court orders or other legal requirements. While marine park officers would also incur costs in the time taken to prosecute such offences, this contribution could be viewed as necessary for the conservation of biodiversity in marine parks which would benefit law-abiding park users.

Under the proposed Regulation, law-abiding visitors are less likely to have their enjoyment jeopardised by others as marine park rangers will be able to direct the removal of persons and property from the marine park.

Impacts on business

Under the proposed Regulation, businesses applying for consent for commercial activities in marine parks will benefit from the greater certainty of clear consent procedures and determination criteria, saving them time and resources.

Providing a clear process for assessing consent and granting or refusing permits should result in less varied assessments of applications across marine parks than under the Base Case. Greater consistency in permissible activities across marine parks will help businesses that operate in more than one marine park coordinate their activities and potentially achieve savings for administrative and operational costs.

The proposed Regulation contains assessment criteria used to determine the granting of consent for activities in marine parks (clauses 8 and 9). The criteria provide those individuals and businesses seeking permits for the commercial supply of goods and services in marine parks with clear and straightforward guidance on the evaluation process for applications. This would provide economic benefits to both businesses and consumers.

Businesses would also benefit from the Marine Parks Authority's permit policy and procedures document and future integration of the marine parks permit system with a national parks licensing system, should this be implemented, in the same ways as described for individuals above.

The levels of producer and consumer benefits likely under the proposed Regulation are expected to be significantly higher than those under the Base Case, which would not have specific assessment criteria to guide Ministers in their determination of consent for activities in marine parks. Also, under the Base Case, no comprehensive mechanisms would exist for marine park rangers to issue and manage compliance with permit conditions. This would be likely to reduce the sustainable use of marine parks.

Restriction of the number of permits issued is provided for under the proposed Regulation as a mechanism for managing activities in accordance with the objects of the Marine Parks Act, including the prevention of unsustainable levels of activity in marine parks. This provision is not intended to impose any material restriction on competition, but should act to limit the

impacts of certain activities that could threaten marine park biodiversity values. These restrictions are expected to be used only where simpler and less restrictive ways of achieving the objects of the Act are unavailable, and where sound and objective information supports the decision. A number of suitable mechanisms that do not involve restricting the number of permits are currently used in marine parks, including zoning arrangements, park closures, permit conditions, management plans for particular sites and activities, and codes of conduct for commercial fishing activities, recreational fishing competitions, charter fishing and scuba diving.

Before considering a limit on the number of permits issued, marine park officers would need to determine whether the threat to a particular marine park activity is related to the intensity of the activity or the number of individuals permitted to engage in it. In some situations, limiting permit numbers may not be an appropriate strategy to reduce the impact of certain activities or lead to more sustainable use of marine park resources. It may be more appropriate to directly address the intensity of an activity by using market-based instruments, for example.

Caps restricting the number of permits are currently in place at Solitary Islands and Jervis Bay marine parks through their operational plans. These caps are implemented as one of the assessment criteria for permits (clause 31(d) of the Marine Parks Regulation 1999 and clause 9(d) of the proposed Regulation).

The Solitary Islands Marine Park Operational Plan (October 2003) caps the number of permits issued for whale and dolphin watching charters, scuba diving charters and fishing charters, and contains actions to assess the sustainability of these activities. The Jervis Bay Marine Park Operational Plan (October 2003) caps the number of permits issued for dolphin watching charters and fishing charters. The cap on whale watching charters has since been assessed and removed. The Jervis Bay operational plan also includes criteria for assessing the sustainability of fishing and dolphin watching charters.

The caps in Solitary Islands and Jervis Bay marine parks were introduced in 2003 as precautionary measures. At the time, impacts of capped activities had not been sufficiently assessed. Monitoring of the impacts over time, coupled with the introduction of new regulations (such as the regulation of approach distances to marine mammals in 2006 under the National Parks and Wildlife Regulation 2002) has contributed significantly to an understanding of how best to address the capped activities.

Provisions for marine park operational plans were changed by the *Marine Parks Amendment Act 2008*. Operational plans are now developed by the Marine Parks Authority in consultation with local marine park advisory committees. As operational plans are reviewed following any amendments to zoning plans, the current zoning plan review for Solitary Islands and Jervis Bay marine parks may necessitate a subsequent review of operational plans for these parks. A new template for operational plans is under development.

In 2000, NSW Fisheries (now the Department of Primary Industries) introduced a cap on charter fishing in NSW limiting:

- the number of recreational charter fishing boats to those operating at 22 October 1997
- any increase in the number of recreational fishers carried, as a result of an increase in the size of a replacement vessel, to the number allowed by the NSW Waterways Authority survey classification for the original vessel at 4 August 1999.

The power to limit the number of permits issued is intended to be used only for biodiversity conservation purposes. It is necessary to ensure that the use of this power does not impose undesirable direct or indirect economic impacts on the activity being restricted. It is recommended that any proposal to limit permits for a specific activity require an economic impact assessment to identify benefits and costs, including distributional impacts, and measures developed to mitigate any such impacts.

The key questions regarding restrictions on competition are not whether they should be permitted under legislative instruments, but whether they impose a net cost to society, and what economic implications there might be. These and other related issues would be considered in the economic impact assessment process recommended above.

The number of permits issued for Solitary Islands and Jervis Bay marine parks, shown in Tables 1 and 2, suggests that a permit system is unlikely to act as a major disincentive to businesses wishing to carry out commercial or organised activities in marine parks.

Provisions of the proposed Regulation that enable the seizure boats and motor vehicles in relation to illegal commercial fishing activities and forfeiture offences in marine parks would benefit law-abiding businesses by providing a deterrent to illegal commercial fishing activities in marine parks. A reduction in illegal commercial fishing activities can be expected to benefit biodiversity conservation and the maintenance of ecological processes in marine parks, and hence the businesses that rely on these outcomes.

The proposed Regulation includes provisions that enable the Marine Parks Authority to require information on commercial fishing and aquaculture in marine parks. This information may be essential for effective management of marine parks and for monitoring the impacts of human activities. Similar regulatory provisions, for commercial fishing but not aquaculture, have been in place since 1999. These provisions have not been used to date, but any future use of the provisions may entail some reporting by commercial fishers or aquaculture operators in marine parks. The provisions are, however, intended to complement existing reporting arrangements for fisheries management rather than duplicate them. Therefore the powers would only be used by the Marine Parks Authority to obtain important information that is not otherwise being collected. Current revisions to catch reporting systems are integrating reporting for commercial fishing in marine parks.

The collection of any additional information on commercial fishing and aquaculture in marine parks may be of benefit to the businesses concerned. For example, it could help to demonstrate that a particular use of a marine park is ecologically sustainable.

Impacts on government

The proposed Regulation provides for common consent procedures applicable to all marine parks. The Base Case would have no such consistent procedures.

The use of consistent procedures for issuing consent (as permits) under the proposed Regulation would reduce the time (and associated opportunity costs) that marine park officers spend on investigating whether a proposed activity is permissible in a marine park. Staff would not need to review various legal instruments that may or may not provide guidance on which activities are permissible. Consistent criteria would also help streamline the consent determination process for each park.

Based on the actual number of permits issued for Solitary Islands and Jervis Bay marine parks shown in Tables 1 and 2, it can be assumed that the continued operation of a permit system (as proposed in Option 1) would provide a workable means for government to manage the potential impacts of activities in marine parks.

It is considered important to retain the ability to provide consent under the 16 clauses for which no permits have been issued in Jervis Bay and Solitary Islands marine parks. These clauses prohibit or restrict particular activities in marine parks and it is important that individuals, communities and businesses have the ability to seek consent and the government is able to consider and grant (or refuse) it and thus provide for a range of potential future activities in marine parks.

The proposed Regulation provides for revenue from penalty notice offences to be retained in the Marine Parks Fund, enabling the costs and expenses of the Marine Parks Advisory Council or advisory committees to be offset by these funds. The Fund can be used to pay charges, costs and expenses incurred in the administration of the Act, including expenses of the Marine Parks

Advisory Council or advisory committees as approved by the relevant Ministers. Revenue would also be used to support programs that improve voluntary compliance, such as marine park signage and communications (e.g. brochures for park visitors) to improve awareness of the regulations. This revenue would not be used for enforcement programs.

The ability to seize boats and motor vehicles in relation to illegal commercial fishing activities and forfeiture offences in marine parks would benefit the government by providing a deterrent to illegal commercial fishing activities in marine parks. Costs would be incurred by government in managing seized boats and motor vehicles, but may be minimised by the use of existing systems and facilities.

As noted above, Option 1 makes provisions to establish the Nature Conservation Council as the default peak body to represent the interests of marine conservation, and also specifies subsequent procedures for appointing representatives from the Nature Conservation Council or alternative peak bodies. This provision would appear to have no particular economic implications for individuals or the community.

The collection of information on commercial fishing and aquaculture in marine parks is essential to effectively managing marine parks and monitoring the impacts of human activities on marine and coastal ecosystems. Information on commercial fishing and aquaculture, for example, can help to determine whether the use of marine parks is ecologically sustainable.

Administrative systems under the proposed Regulation would be nearly identical to those existing at present, so there would be little or no cost to government in changing to the new systems. Some staff training would be required to implement new and changed provisions, but this is expected to incur minimal costs.

Conclusion

Based on the assessment above, the proposed Marine Parks Regulation 2009 is expected to provide greater benefits than the Base Case to individuals and the community, business and government. Benefits to individuals are expected to accrue from stronger regulation of undesirable activities in marine parks, leading to greater enjoyment of marine park values. Better management of activities is likely to attract additional visitors to marine parks and surrounding areas, resulting in additional visitor expenditure and direct and flow-on benefits to local businesses. Government would benefit from reduced administrative and enforcement prosecution costs associated with more effective powers for managing activities in marine parks.

3.3 Option 2: Use other existing regulations and non-regulatory instruments instead of the proposed Marine Parks Regulation 2009

Option 2 represents the situation that would apply if those provisions not related to zoning plans in the current Marine Parks Regulation 1999 lapsed on 1 September 2009 (i.e. only provisions relating to zoning plans continued to exist) and other existing regulations and non-regulatory instruments were used to support the *Marine Parks Act 1997*. Under the Base Case, in contrast, the intentional use of alternative regulations and non-regulatory instruments would not occur.

Option 2 does not involve relocating provisions that would be included in Option 1 (the proposed Marine Parks Regulation 2009) to the Marine Parks (Zoning Plans) Regulation 1999, or other existing regulations and non-regulatory instruments.

3.3.1 Differences between the Base Case and Option 2

In limited circumstances, the powers of a range of legislation other than the Marine Parks Act could be used to achieve some of the objects of the Act (e.g. the *Fisheries Management Act 1994* and regulations, and the *National Parks and Wildlife Act 1974* and regulations). The use of such powers would be an improvement to the situation that would apply under the Base Case, where no such powers were available, by enabling marine park officers and other authorised

agency officers to exercise some functions which would at least partially assist in protecting marine park values. However, it is not generally the purpose of legislation concerning fisheries management, national parks or other matters to provide provisions for managing marine parks. Although similar legislative powers could be used under certain circumstances to fill gaps in the absence of a specific marine parks regulation, they would not be effective substitutes for a dedicated regulation as they do not provide a complete and strategic mechanism for achieving the objects of the Marine Parks Act.

Consent procedures

As with the Base Case, Option 2 would not specify consent procedures for activities in marine parks. However, it may be possible to use other regulations or non-regulatory instruments to manage consent procedures and these are explored in Section 3.3.2. Given a lack of other regulations that obviously contain procedures for issuing marine park permits, it is unlikely that there would be mechanisms available for all the consents in the proposed Regulation (Option 1).

Compliance and penalties and functions of rangers and the Marine Parks Authority

Powers for marine park rangers to issue penalty notices would not exist under Option 2 or under the Base Case, though under Option 2 it may be possible to use powers from other regulations to issue penalty notices (e.g. under the National Parks and Wildlife Regulation 2002). However, these other regulations would not provide a general power for marine park rangers to issue penalty notices for offences under the Marine Parks Act.

Under both Option 2 and the Base Case, there would be no prescribed penalty notice offences and no powers for marine park rangers to remove people, property or heavily fouled hulls from marine parks. Further, the Marine Parks Authority would not have the power to require information on commercial fishing and aquaculture in marine parks which, as noted above, may be essential for managing activities in marine parks.

Under Option 2, other regulations may provide an avenue for addressing some of these offences and functions. In general, however, offences in marine parks cannot be readily enforced under other legislation. National parks and wildlife legislation does not have provisions and offences for the removal of people and property from marine parks. Maritime legislation does not contain direct provisions and offences for the removal of heavily fouled hulls from marine parks, although fouling species could be managed under fisheries management legislation where they are declared to be noxious. For example, black striped mussels (all species of the genus *Mytilopsis*) are currently declared noxious fish species and can be managed by marine park officers under fisheries management legislation.

Fisheries management legislation does not provide the Marine Parks Authority with the ability to require information on commercial fishing and aquaculture in marine parks. The information required could potentially be collected by the Department of Primary Industries on behalf of the Marine Parks Authority, noting that the provisions of the proposed Regulation are intended to operate in addition to information collected for fisheries management, rather than to duplicate existing provisions.

Specific provisions regarding the avoidance of double jeopardy would not exist under Option 2 or the Base Case. However, double jeopardy could potentially be avoided under Option 2 using a suitable policy (prosecutorial discretion) and protection available under common law. Both of these approaches would be weaker than a statutory approach which provides greater protection for individuals, communities and businesses.

Under Option 2 and the Base Case, there would be no specific exemption for activities of the Australian Defence Force in marine parks. There are no obvious non-statutory approaches to provide this exemption under Option 2. In lieu of a regulatory power, it may be possible under the Marine Parks Act for the Marine Parks Authority to create an agency policy for discretionary enforcement to achieve such an exemption.

Under Option 2, it is possible that an action carried out by a marine park ranger in the exercise of their functions or done under the direction of the Marine Parks Authority could be classed as an offence as there are no provisions in other regulations (or non-regulatory measures) that could provide a general defence for these rangers.

Marine Parks Advisory Council and advisory committees

Provisions for the representation of marine conservation interests on the Marine Parks Advisory Council would not exist under Option 2 or the Base Case. A suitable policy, possibly with minor amendments to the Marine Parks Act, could be developed to achieve a similar outcome to these provisions.

3.3.2 Costs and benefits of Option 2

The differences between the Base Case and Option 2, as outlined above, are considered in terms of their impacts on individuals and the community, business and government.

While constituting an improvement on the Base Case by providing powers that result in partial benefits for marine park management, there are limitations to using other legislation to manage marine parks. The objects of the Fisheries Management Act relate only to the conservation of fish stocks, key fish habitats and threatened species of fish and marine vegetation, so it is not possible to use this Act (or associated regulations) to achieve the overall conservation of marine biodiversity and maintenance of ecological processes, which are the principal objects of the Marine Parks Act.

Developing codes of practice for different categories of marine park users and relying on voluntary compliance as a means of regulating activities in marine parks would severely limit the ability of the Marine Parks Authority to achieve the objects of the Marine Parks Act. Depending on non-binding codes of practice with no disincentives for inappropriate behaviour is likely to result in a relatively low deterrence of activities that are contrary to the objects of the Act and consequently limit the effectiveness of marine parks as a tool for conserving marine biodiversity.

Option 2 would make no provision for regulating many of the activities that threaten the sustainable use and enjoyment of marine parks. In the absence of a dedicated regulation to manage these activities, marine park staff may be forced to rely on other authorities, such as the police, to enforce various pieces of legislation.

Impacts on individuals and the community

Under Option 2, the operation of marine park management under an assortment of legislation and policies could confuse park users although perhaps less than would occur under the Base Case. This is because the restrictions applicable to activities, and the conditions for granting consents and permits, would be scattered – and a large portion may have no immediate relevance to marine parks. It would be unclear which regulations and policies would apply to the proposed activities. As result, this could cost park users time and energy identifying the applicable regulations.

Individuals and communities are expected to be affected differently under Option 2 and the Base Case in relation to compliance and the ability of marine parks staff to use penalty mechanisms. Law-abiding individuals would be little affected under Option 2, except by a possible increase in compliance in marine parks (compared with the Base Case) resulting in more effective biodiversity conservation and increased enjoyment of parks. Individuals causing annoyance or inconvenience in various ways may be disadvantaged by the slightly higher level of regulation operating under Option 2 than under the Base Case.

With no provision for marine park rangers to issue penalty notices for offences in marine parks, some individuals conducting illegal activities would instead be prosecuted for contraventions of the Marine Parks Act. Court convictions could be expected to result in higher penalties than would apply under a penalty notice system.

Further, individuals illegally taking fish in marine parks would not be protected by specific provisions for double jeopardy. Under Option 2 and the Base Case, there is a risk that individuals could be prosecuted more than once for the same offence, but under different legislation.

Impacts on business

Compared to the Base Case, Option 2 offers a slight benefit to businesses that provide services in marine parks. However, the operation of marine park management under assorted legislation and policies would create greater inefficiencies for these businesses. As would be the case for individuals seeking consent for activities in marine parks, under Option 2 it is likely that businesses would have difficulty identifying the applicable regulations. Businesses would need to be aware of a wide range of legislation and policy and its possible application to marine parks. As result, they could spend time and resources in identifying which regulations apply.

The granting of permits for the commercial provision of goods and services in marine parks, which are consistent with the objects of the Marine Parks Act, will provide economic benefits to businesses in terms of the producer surplus gained and for consumers of these goods and services.

Procedures for Ministers to grant consent for activities and for marine parks officers to issue and manage compliance with permit conditions will be somewhat clearer under Option 2 compared with the Base Case. However, the lack of efficient processes for granting consent and issuing permits under Option 2 would likely discourage potential applicants, as well as the renewal of permits.

Impacts on government

The operation of marine park management under the system that would apply under Option 2 would improve on the Base Case but would be unwieldy and inefficient for marine park officers to implement. The lack of a specific regulation covering management of activities in marine parks would force staff to identify and rely on other legislation or non-regulatory means, such as codes of practice, to implement effective park management. Given other legislation may not be relevant to marine parks, and that non-regulatory measures may not be enforceable, this approach is unlikely to be an effective means of regulating marine park activities or efficient use of staff time. The resulting need for staff to devote a high proportion of their time to attempting to manage the impacts of activities in marine parks through measures not specifically designed for that purpose would be to the detriment of their other duties, especially management of biodiversity and scientific research.

A lack of provisions for marine park rangers to issue penalty notices for offences in marine parks could mean that marine park staff and the Marine Parks Authority are required to commit more time and resources to prosecuting offences through the courts than through a penalty notice system. The Marine Parks Authority and the defendant would incur higher costs than under a penalty notice system and society in general would incur costs from having offences prosecuted through the courts. In addition, the lower likelihood of successful prosecutions undertaken or reaching a conclusion (for example because the Marine Parks Authority is unwilling to commit resources to court actions to prosecute low-level offences) would lead to lower deterrence of potential offenders.

There would be no regulatory provisions under Option 2 to guide consideration of applications for consent. The lack of a coherent set of criteria for assessing and granting consents would create uncertainty for marine park staff identifying permissible activities in marine parks. While other legislation may provide limited guidance on permissible activities, it was not designed to achieve the objects of the Marine Parks Act and would not be an effective substitute for a dedicated regulation (as proposed in Option 1). The need to identify, adapt and apply other legislation to meet the lack of specific guidance for granting consent would require marine park staff – and officers of other agencies such as the Department of Primary Industries and the National Parks and Wildlife Service – to devote additional time and incur administrative costs.

In the absence of specific provisions, as would be the case under Option 2, the activities of the Australian Defence Force in marine parks would not be explicitly exempt from provisions of the Marine Parks (Zoning Plans) Regulation 1999. This uncertainty over Commonwealth and State jurisprudence may cause unnecessary time and legal costs to be incurred by NSW and Commonwealth officers trying to identify the applicable legislation.

Under Option 2, there is no assurance that an action carried out by a marine park ranger exercising their powers or done under the direction of the Marine Parks Authority would automatically be excluded from being an offence. The lack of a legal defence for marine park rangers and other relevant individuals could require the government to incur legal costs in defending the exercise of functions by marine park rangers and other relevant individuals. The size of these costs is not known.

Section 32(2)(b) of the Marine Parks Act provides for two members on the Marine Parks Advisory Council to represent the interests of marine conservation: an expert in marine conservation and an individual nominated by a peak group or body generally recognised for its interest in conservation, as provided for in the Regulation. However, the peak group or body would not be defined under Option 2. This may affect the ability of the government to obtain conservation representatives for the Advisory Council.

Conclusion

Based on the assessment above, the relative costs to government under Option 2 where a range of other legislation, policy and non-regulatory alternatives would be used to deliver management in and across the system of NSW marine parks, are assumed to be lower than those of the Base Case. The benefits associated with Option 2 would also be expected to be higher than those presented under the Base Case due to the improved ability to protect biodiversity and sustainable use of marine parks.

4. Conclusions

The RIS describes amendments to the Marine Parks Regulation 1999 to establish the Marine Parks (Zoning Plans) Regulation 1999 and examines options for achieving the objectives of the proposed Marine Parks Regulation 2009.

The RIS describes the Base Case with no regulation, and its differences from the proposed Marine Parks Regulation 2009 (Option 1) and a further option for achieving the objects of the *Marine Parks Act 1997* by using existing regulations and non-regulatory instruments (Option 2).

Also described were the differences expected between the Base Case and its alternatives, as well as their associated costs and benefits to individuals and the community, business and government.

Compared with the Base Case, the proposed Marine Parks Regulation 2009 is expected to be considerably more successful in regulating activities in marine parks and will address a range of matters essential to effective management of marine parks. This includes permit procedures and the functions of rangers and the Marine Parks Authority that are not provided for under the Base Case. The proposed Regulation would both increase the benefits and reduce the costs of marine park management relative to the Base Case.

Option 2 seeks to use existing regulations and non-regulatory instruments to achieve the objects of the Marine Parks Act. Some of the functions required for effective marine park management cannot be covered by the approach proposed under Option 2, although it may be possible to develop a range of instruments to address some of the regulatory measures required for marine park management. A non-integrated approach using a range of legislation, regulations and policies, as proposed in Option 2, would increase administrative costs for businesses and government and possibly confuse the broader community. Overall, a lower level of protection for marine biodiversity would be expected under Option 2 than under Option 1 due primarily to a lack of integrated regulations for marine parks, reduced regulatory powers and reduced coverage of legislation.

Therefore, the proposed Marine Parks Regulation 2009 has been identified as the most practical means of achieving the objects of the Marine Parks Act. The proposed Regulation would also produce greater benefits to individuals and the community, and lower costs to business and government through better regulation of marine park activities as compared with the Base Case and Option 2.

Public consultation draft



New South Wales

Marine Parks Regulation 2009

under the

Marine Parks Act 1997

[*The following enacting formula will be included if the Regulation is made:*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Parks Act 1997*.

Minister for Climate Change and the Environment

Minister for Primary Industries

Explanatory note

The *Marine Parks Amendment Act 2008* provided that regulations containing only provisions relating to zoning plans for marine parks are exempt from section 10 of the *Subordinate Legislation Act 1989* which provides for the staged repeal of statutory rules.

The object of this Regulation is, as a consequence of that amendment, to separate the provisions of the *Marine Parks Regulation 1999* into 2 instruments. The first, the *Marine Parks (Zoning Plans) Regulation 1999*, will contain the zoning plans for all marine parks and related provisions and the second, the *Marine Parks Regulation 2009*, will contain all other matters prescribed under the *Marine Parks Act 1997*. Only the latter of these instruments will be subject to the staged repeal process under the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the giving of consent by the Minister for Climate Change and the Environment and the Minister for Primary Industries (the **relevant Ministers**) in relation to activities within marine parks,
- (b) the functions of marine park rangers and the Marine Parks Authority,
- (c) the Marine Parks Advisory Council and marine parks advisory committees,
- (d) the seizure of things in marine parks,

Public consultation draft

Marine Parks Regulation 2009

Explanatory note

- (e) the offences under the Act and Regulations for which penalty notices (“on-the-spot” fines) may be issued and the amounts of the penalty payable under such notices,
- (f) the avoidance of double jeopardy,
- (g) an exemption with respect to Australian Defence Force activities,
- (h) consequential amendments to the *Marine Parks Regulation 1999* including renaming that instrument as the *Marine Parks (Zoning Plans) Regulation 1999*, restructuring and renumbering that instrument, permitting the relevant Ministers to consent to fishing in a habitat protection zone where this is carried out for traditional use purposes and designating certain offences as forfeiture offences,
- (i) savings and formal matters.

This Regulation is made under the *Marine Parks Act 1997*, including Divisions 1 and 1A of Part 3 and sections 32 (2) (b) and 48 (the general regulation-making power).

Public consultation draft

Marine Parks Regulation 2009

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Marine Parks Regulation 2009

Clause 1

Preliminary

Part 1

Marine Parks Regulation 2009

under the

Marine Parks Act 1997

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Marine Parks Regulation 2009*.

2 Commencement

This Regulation takes effect at the end of 31 August 2009 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the provisions of the *Marine Parks Regulation 1999* other than provisions that relate to zoning plans for marine parks. That Regulation will continue to contain such provisions and is renamed by Schedule 2 to this Regulation as the *Marine Parks (Zoning Plans) Regulation 1999*.

3 Definitions

(1) In this Regulation:

permit means a permit under Part 2.

the Act means the *Marine Parks Act 1997*.

the relevant Ministers and *zoning plan* have the same meanings as in the *Marine Parks (Zoning Plans) Regulation 1999*.

(2) If a provision of this Regulation requires or authorises the relevant Ministers to take any action or decide any matter, the provision is taken only to require or authorise the relevant Ministers to take the action jointly or decide the matter jointly.

(3) Notes included in this Regulation do not form part of this Regulation.

4 Regulation applies subject to other legislation

(1) This Regulation has effect subject to section 22 of the Act.

Note. Section 22 of the Act provides that any requirements made by or under Part 3 of the Act are in addition to any requirement in any other Act or statutory instrument, such as requirements under the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974*.

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Clause 4 Marine Parks Regulation 2009

Part 1 Preliminary

- (2) Nothing in this Regulation is to be construed as authorising the harming of any particular species of plant or fish, or the harming of any plants or fish by a particular method, in contravention of the *Fisheries Management Act 1994*, the *National Parks and Wildlife Act 1974* or statutory instruments made under those Acts.
- (3) In addition, nothing in this Regulation is to be construed as authorising the carrying out of any activity in contravention of a marine park closure under section 20A of the Act.

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Marine Parks Regulation 2009

Clause 5

Consent of relevant Ministers

Part 2

Part 2 Consent of relevant Ministers

5 Consent for activities

If this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999* requires the consent of the relevant Ministers before an activity may be carried out, the consent is to be in accordance with this Part.

6 Applications for consent

An application for the consent of the relevant Ministers to the carrying out of an activity in a marine park must be made in the form approved by the relevant Ministers.

Note. Section 307A of the *Crimes Act 1900* makes it an offence to make a false or misleading statement in, or a misleading omission from, an application for a permit.

7 Relevant Ministers may ask for further information

- (1) The relevant Ministers may make a written request to any person who has made an application for consent to carry out any activity, asking for further information to assist the Ministers in considering the application.
- (2) The relevant Ministers do not have to consider an application if any request for further information is not complied with within the time specified by the relevant Ministers in the request.

8 Must have regard to assessment criteria

- (1) The relevant Ministers must have regard to the assessment criteria in deciding whether or not to give consent to the carrying out of any activity in a marine park.
- (2) This clause does not apply to applications for consent to carry out activities (including educational or research activities) that the relevant Ministers consider will have minimal impact on the biodiversity, enjoyment or use of the marine park.
- (3) This clause does not limit the factors that the relevant Ministers may have regard to when considering an application for consent to carry out an activity.

9 Assessment criteria

For the purposes of this Part and section 18 (6) of the Act, the following matters are the *assessment criteria* in deciding whether or not to give consent to the carrying out of any activity in a marine park:

- (a) the objects of the Act (as specified in section 3 of the Act),

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Clause 10 Marine Parks Regulation 2009

Part 2 Consent of relevant Ministers

- (b) the objects of the zone in which the activity is proposed to be carried out,
- (c) the activities that are permissible in the zone in which the activity is proposed to be carried out (as specified in the relevant zoning plan),
- (d) any operational plan for the marine park adopted by the relevant Ministers pursuant to section 25 (4) of the Act,
- (e) any threatened species or other protected flora or fauna under the *Fisheries Management Act 1994*, the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995* that may be affected by the proposed activity,
- (f) the form of transport to be used to gain access to the zone in which the activity is proposed to be carried out or on or from which the activity is proposed to be carried out, having regard to the adequacy of facilities for parking, mooring and landing vehicles, vessels and aircraft, and for loading and unloading them,
- (g) the type of equipment to be used in connection with the proposed activity,
- (h) the arrangements that have been made for the making good of any damage to the marine park that arises from the proposed activity,
- (i) such other requirements as the relevant Ministers consider appropriate to the proposed activity.

10 Consent must be refused in certain circumstances

- (1) The relevant Ministers must not give consent to the carrying out of any activity in a marine park that, in the opinion of the relevant Ministers, is inconsistent with the objects of the Act.
- (2) Except in emergencies, the relevant Ministers must not give consent to the carrying out of any activity in a zone of a marine park that, in the opinion of the relevant Ministers, is inconsistent with the objects of the zone.
- (3) The relevant Ministers must not give consent to the carrying out of any activity contrary to the provisions of any determination in force under clause 20.

11 Consent may be refused in certain other circumstances

- (1) The relevant Ministers may refuse to give consent to the carrying out of any activity in a marine park if:
 - (a) the application for consent was not made in the approved form, or

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Marine Parks Regulation 2009

Clause 12

Consent of relevant Ministers

Part 2

- (b) the applicant has failed to respond to a request for further information made under clause 7 or has responded in a way that the relevant Ministers consider is unsatisfactory, or
 - (c) the applicant has been convicted of an offence under the Act or this Regulation, or under similar legislation of another jurisdiction, in the 12 months before the application was made, or
 - (d) the applicant has been issued with 2 or more penalty notices for offences under the Act or this Regulation in the 12 months before the application was made, being penalty notices that were not later dismissed by a court, or
 - (e) the proposed activity is inconsistent with the assessment criteria (to the extent that those criteria are applicable to the application).
- (2) This clause does not limit the factors that the relevant Ministers may take into account when considering an application for consent under this Part.

12 Consent to be given in form of permit

The consent of the relevant Ministers to the carrying out of an activity in a marine park is to be given in the form of a written permit.

13 Permit may be granted subject to conditions

- (1) A permit is subject to any conditions that are specified in the permit.
- (2) The holder of a permit who contravenes any condition of the permit is guilty of an offence.
Maximum penalty: 100 penalty units.

14 Permit may authorise others

- (1) A permit may authorise specified persons, or a specified class of persons, in addition to the person to whom the permit is granted to carry out the activities to which the permit relates.
- (2) In any such case, the specified persons, or specified class of persons, are taken to be holders of the permit for the purposes of this Regulation and the zoning plan to which the permit relates.

15 Term of permit

Unless sooner suspended or cancelled, a permit remains in force for such period as is specified in the permit.

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Clause 16 Marine Parks Regulation 2009

Part 2 Consent of relevant Ministers

16 Cancellation of permit

- (1) A permit under this Part may be cancelled by the relevant Ministers for any of the following reasons by notice in writing to the holder of the permit:
- (a) the holder has not complied with a condition of the permit,
 - (b) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, the activity to which the permit relates has resulted in damage, degradation or disruption to the physical environment or to the living resources of the marine park,
 - (c) due to circumstances that were not foreseen, and were not reasonably foreseeable at the time the permit was granted, there is a likely or imminent threat that the activity to which the permit relates will result in damage, degradation or disruption to the physical environment, to the living resources of the marine park or to the appreciation, understanding and enjoyment of the marine park by other persons,
 - (d) the holder has made a statement or an omission in, or in connection with, the holder's application for the permit that was, in the opinion of the relevant Ministers, false or misleading,
 - (e) the holder has been convicted of an offence under the Act or this Regulation,
 - (f) the relevant Ministers have included in a notice suspending a permit a warning that the permit will be cancelled if the action specified in the notice is not taken within the time specified in the notice and that action has not been taken within that time,
 - (g) the carrying out of the activity to which the permit relates did not commence within the period of 120 days dating from the date of the grant of the permit,
 - (h) any other reason that the relevant Ministers consider appropriate having regard to the objects of the Act.
- (2) The cancellation of a permit takes effect on the date specified in the notice of the cancellation (being a date occurring on or after the date on which the notice is given).

17 Suspension of permit

- (1) A permit granted under this Part may be suspended by the relevant Ministers for any of the reasons specified in clause 16 (1) (a)–(c) or (h) by notice in writing to the holder of the permit.

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Marine Parks Regulation 2009

Clause 18

Consent of relevant Ministers

Part 2

- (2) The relevant Ministers may include in the notice suspending a permit a warning that the permit will be cancelled if the action specified in the notice is not taken within the time specified in the notice.
- (3) The suspension of a permit takes effect on the date specified in the notice of the suspension (being a date occurring on or after the date on which the notice is given).
- (4) While a suspension is in force, the holder of the permit is taken not to have the consent of the relevant Ministers to carry out the activity to which the permit relates.
- (5) The relevant Ministers may, at any time, revoke a suspension of a permit.

18 Variation of permit

The relevant Ministers may, by notice in writing to the holder of a permit, vary the conditions of the permit, or add conditions to a permit granted without conditions, for any of the reasons specified in clause 16 (1) (a)–(d) or (h).

19 Surrender of permit

A permit under this Part may be surrendered at any time by the holder of the permit giving notice in writing to the relevant Ministers.

20 Restriction of number of permits that may be issued

- (1) The relevant Ministers may from time to time determine, in relation to a marine park or a zone within a marine park:
 - (a) the maximum number of permits that may be in force at any one time in relation to the marine park or zone, either generally or in relation to specified activities or classes of activities, and
 - (b) for each activity in respect of which a maximum number has been determined, the priority to be given to different classes of applicant in the consideration of any application for a permit.
- (2) In making a determination under this clause, the relevant Ministers must have regard to the following:
 - (a) any existing use within the marine park or zone as at the time the marine park or zone came into existence,
 - (b) the environmental, cultural or social impact of any such use,
 - (c) whether or not any such use is consistent with the assessment criteria.

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Clause 21 Marine Parks Regulation 2009

Part 3 Functions of rangers and Authority

Part 3 Functions of rangers and Authority

21 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 inconvenience to any other person in the marine park, or
 - (b) has committed an offence against the Act, this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999* or is likely to commit such an offence.
- (2) A person must not fail to comply with such a direction.
Maximum penalty: 100 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.

22 Removal of property from marine park

- (1) A marine park ranger may direct the person responsible for any property to remove the property from a marine park or any part of a marine park if, in the opinion of the marine park ranger, the property:
 - (a) is causing inconvenience to any other person in the marine park, or
 - (b) is causing a significant impact on species or habitats, or
 - (c) is likely to create an environmental hazard.
- (2) A person must not fail to comply with such a direction.
Maximum penalty: 100 penalty units.
- (3) A marine park ranger may remove (or may arrange for another person to remove) from a marine park, or any part of a marine park, any property that is not removed by the person responsible for the property in accordance with a direction under this clause.
- (4) In this clause:
person responsible, in respect of property in a marine park, means:
 - (a) the person who caused the property to be in the marine park, or
 - (b) if the person referred to in paragraph (a) is unknown or is unable to remove the property—the person who has control of the property, or

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Marine Parks Regulation 2009

Clause 23

Functions of rangers and Authority

Part 3

- (c) if the persons referred to in paragraphs (a) and (b) are unknown or are unable to remove the property—the owner of the property.

property includes a vehicle, vessel or mooring.

23 Removal of heavily fouled vessels from marine park

- (1) A marine park ranger may direct the master of a vessel to remove the vessel from the marine park if the ranger reasonably believes that the vessel's hull or machinery is so heavily fouled by marine organisms as to pose a significant risk of the introduction of exotic animals or plants into the marine park.
- (2) A master of a vessel must not fail to comply with such a direction.
Maximum penalty: 100 penalty units.

24 Information regarding aquaculture or commercial fishing

- (1) The Authority may give a written notice to any one or more of the following:
- (a) the holder of an aquaculture permit who carries out aquaculture in a marine park,
 - (b) a commercial fisher who carries out commercial fishing in a marine park,
 - (c) a fishing employer whose nominated fisher carries out commercial fishing in a marine park,
- directing the person to provide the Authority, within such reasonable time as may be specified in the notice, with such information in relation to that aquaculture or commercial fishing as may be specified in the notice.

- (2) A person must not fail to comply with the requirements of a notice served on the person under this clause.
Maximum penalty: 100 penalty units.

Note. Section 307B of the *Crimes Act 1900* makes it an offence (maximum penalty, imprisonment for 2 years, or a fine of \$22,000, or both) to give false or misleading information to the Authority in relation to a notice under this clause.

- (3) In this clause:
- aquaculture***, ***aquaculture permit*** and ***commercial fisher*** have the same meanings as in the *Fisheries Management Act 1994*.
- commercial fishing*** means any activity involving the taking of any fish for purposes of sale.
- fishing employer*** and ***nominated fisher*** have the same meanings as in section 122 of the *Fisheries Management Act 1994*.

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Clause 25 Marine Parks Regulation 2009

Part 3 Functions of rangers and Authority

25 Things done by ranger or under direction of Authority

A person does not commit an offence under this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999* for anything 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.

26 Delegation of Authority's functions

The Authority may delegate the exercise of any of its functions under this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999* (other than this power of delegation) to any of the following persons:

- (a) a member of the Authority,
- (b) a marine park ranger,
- (c) a public servant,
- (d) a person of a class approved by the relevant Ministers.

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Marine Parks Regulation 2009

Clause 27

Miscellaneous

Part 4

Part 4 Miscellaneous

27 Advisory Council members—marine conservation interests

- (1) For the purposes of section 32 (2) (b) of the Act, the Nature Conservation Council of NSW (the *NCC*) is the peak group or body to represent the interests of marine conservation.
- (2) If a vacancy arises in the office of the member of the Advisory Council appointed on the nomination of the NCC (the *NCC member*), the relevant Ministers must call on the NCC to nominate (within such period as the relevant Ministers may specify) at least 2 candidates from whom a new NCC member is to be appointed.
- (3) The relevant Ministers are to appoint as the new NCC member whichever of the candidates nominated by the NCC the relevant Ministers consider most suitable for appointment as the NCC member.
- (4) If the NCC:
 - (a) fails to nominate candidates when called on to do so by the relevant Ministers, or
 - (b) fails to nominate a candidate who the relevant Ministers consider suitable for appointment as the NCC member,the relevant Ministers may call on some other group or body to nominate at least 2 candidates (an *alternative peak group*) and, in that event, the alternative peak group is taken to be the peak group or body to represent the interests of marine conservation for the purposes of section 32 (2) (b) of the Act.
- (5) Subclauses (2)–(4) apply in relation to an alternative peak group in the same way as they apply in relation to the NCC.

28 Advisory committee members terms of office

For the purposes of section 35 (6) of the Act, clause 2 (2) of Schedule 2 to the Act does not apply to a person who has been appointed as a member of an advisory committee to represent certain interests if, in the opinion of the relevant Ministers, no other person is available to adequately represent those interests.

29 Seizure of things in marine parks

For the purposes of section 36 (3) of the Act, the application of section 265 of the *Fisheries Management Act 1994* is modified so that a reference to a forfeiture offence in that section is to be read as a reference to a contravention of any of the following provisions:

- (a) section 20G (1) or (2) of the Act,

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Clause 30 Marine Parks Regulation 2009

Part 4 Miscellaneous

- (b) a provision of this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999*, the contravention of which is designated as:
 - (i) a serious offence for the purposes of section 17A of the Act, or
 - (ii) a forfeiture offence.

30 Penalty notice offences

For the purposes of section 38 of the Act:

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

31 Double jeopardy

A person cannot be convicted of both an offence under this Regulation or the *Marine Parks (Zoning Plans) Regulation 1999* and an offence under the *Fisheries Management Act 1994* (or the regulations under that Act) in respect of the same act or omission.

32 Exemption for Australian Defence Force activities

- (1) This Regulation and the *Marine Parks (Zoning Plans) Regulation 1999* do not apply to or in respect of any activity carried out by or under the direction of the Commonwealth Department of Defence (including any arm of the Australian Defence Force).
- (2) This clause does not prevent the Authority from entering into an arrangement with the Commonwealth with respect to the activities of the Australian Defence Force in marine parks.

33 Saving

Any act, matter or thing that, immediately before the repeal of a provision of the *Marine Parks Regulation 1999* by this Regulation, had effect under that provision continues to have effect under this Regulation.

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Marine Parks Regulation 2009

Penalty notice offences

Schedule 1

Schedule 1 Penalty notice offences

(Clause 30)

Column 1	Column 2
Offence	Penalty
Offences under the Act	
Section 17A	\$500
Section 20G (1)	\$500
Section 20G (2)	\$500
Section 20H (2)	\$500
Offences under this Regulation	
Clause 13 (2)	\$500
Clause 21 (2)	\$200
Clause 22 (2)	\$500
Clause 23 (2)	\$200
Clause 24 (2)	\$200
Offences under the Marine Parks (Zoning Plans) Regulation 1999	
Clause 8A (1)	\$500
Clause 9 (1)	\$500
Clause 9A	\$500
Clause 11 (1) (a)	\$500
Clause 11 (1) (b)	\$500
Clause 11 (1) (c)	\$500
Clause 12 (2) (a)	\$500
Clause 12 (2) (b)	\$500
Clause 15 (1) (a)	\$500
Clause 15 (1) (b)	\$500
Clause 15 (1) (c)	\$500
Clause 16 (2)	\$500
Clause 18A (1) (a)	\$500
Clause 18A (1) (b)	\$500

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Schedule 1 Penalty notice offences

Column 1	Column 2
Offence	Penalty
Clause 18A (1) (c)	\$500
Clause 18B (1)	\$500
Clause 19 (1)	\$500
Clause 19 (1A)	\$500
Clause 19 (2)	\$500
Clause 19 (2A)	\$500
Clause 20 (1) (a)	\$300
Clause 20 (1) (b)	\$300
Clause 20 (1) (c)	\$300
Clause 20 (1) (d)	\$300
Clause 20 (1) (e)	\$300
Clause 20 (2)	\$300
Clause 20 (3)	\$300
Clause 20B	\$200
Clause 21 (1) (a)	\$300
Clause 21 (1) (b)	\$500
Clause 21 (1) (c)	\$500
Clause 22 (1) (a)	\$300
Clause 22 (1) (b)	\$300
Clause 22 (1A)	\$220
Clause 23 (1)	\$300
Clause 24 (1) (a)	\$500
Clause 24 (1) (b)	\$500
Clause 24A (a)	\$300
Clause 24A (b)	\$300
Clause 24A (c)	\$300
Clause 24A (d)	\$300
Clause 26 (1) (a)	\$200
Clause 26 (1) (b)	\$200

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Marine Parks Regulation 2009

Penalty notice offences

Schedule 1

Column 1	Column 2
Offence	Penalty
Clause 26 (1) (c)	\$200
Clause 26 (1) (d)	\$200
Clause 27 (2)	\$500
Clause 27A (1)	\$500
Clause 27B	\$500
Clause 28 (1) (a)	\$200
Clause 28 (1) (b)	\$200
Clause 28 (1) (c)	\$500
Clause 29	\$500
Clause 30 (1)	\$200

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Marine Parks Regulation 2009

Schedule 2 Amendment of Marine Parks Regulation 1999

Schedule 2 Amendment of Marine Parks Regulation 1999

[1] The whole Regulation (except Schedules 1 and 2)

Omit all Part and Division headings.

[2] Part 1, Division 1, headings

Insert before clause 1:

Part 1 General provisions relating to zoning plans

Division 1 Preliminary

[3] Clause 1 Name of Regulation

Insert “(Zoning Plans)” after “Marine Parks”.

[4] Clause 3 Definitions

Omit “Part 3A” from the definition of *permit* in clause 3 (1).

Insert instead “Part 2 of the *Marine Parks Regulation 2009*”.

[5] Clause 3 (1), definition of “zoning plan” and (2)

Omit “Schedule 1” wherever occurring. Insert instead “Parts 2–7”.

[6] Clause 3 (3)

Insert after clause 3 (2):

(3) Notes included in this Regulation do not form part of this Regulation.

[7] Part 1, Division 2, heading

Omit clause 4. Insert instead:

Division 2 Marine park zones

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Marine Parks Regulation 2009

Amendment of Marine Parks Regulation 1999

Schedule 2

[8] Part 1, Division 2, Subdivision 1 and Subdivision 2, heading

Omit clause 5. Insert instead:

Subdivision 1 Zoning plans and zone objects

5 Zoning plans

- (1) The following Parts set out the zoning plans for each of the following marine parks:
 - (a) Part 2—Solitary Islands Marine Park,
 - (b) Part 3—Jervis Bay Marine Park,
 - (c) Part 4—Lord Howe Island Marine Park,
 - (d) Part 5—Cape Byron Marine Park,
 - (e) Part 6—Port Stephens—Great Lakes Marine Park,
 - (f) Part 7—Batemans Marine Park.
- (2) A zoning plan for a marine park may include any number of sanctuary, habitat protection, general use and special purpose zones.

5A 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, natural features and cultural features (both Aboriginal and non-Aboriginal) in the zone, 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.

5B Objects of habitat protection zone

The objects of the habitat protection zone are:

- (a) to provide a high level of protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) in the zone, and

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Marine Parks Regulation 2009

Schedule 2 Amendment of Marine Parks Regulation 1999

- (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 and do not have a significant impact on any fish populations or on any other animals, plants or habitats.

5C Objects of general use zone

The objects of the general use zone are:

- (a) to provide protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) 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.

5D Objects of special purpose zone

The objects of the special purpose zone are:

- (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, and
- (b) to cater for special facilities and features in the zone such as slipways, breakwaters, berthing facilities and shipwrecks, and
- (c) such objects as may be set out in the zoning plan for a marine park.

Subdivision 2 Sanctuary zone

[9] Clauses 6, 10, 14 and 18

Omit the clauses.

[10] Part 1, Division 2, Subdivision 3, heading

Insert after clause 9A:

Subdivision 3 Habitat protection zone

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Marine Parks Regulation 2009

Amendment of Marine Parks Regulation 1999

Schedule 2

- [11] Clause 11 Protection of animals, plants and habitat in habitat protection zone**
Omit “and has a negligible impact on other animals, plants and habitat” from clause 11 (2) (b).
Insert instead “or on any other animals, plants or habitats”.
- [12] Clause 11 (3)**
Insert after clause 11 (2):
(3) A contravention of subclause (1) is designated as a forfeiture offence.
Note. See section 36 of the Act and clause 29 of the *Marine Parks Regulation 2009*.
- [13] Clause 12 Limited fishing activities in habitat protection zone**
Insert “, traditional use” after “public health” in clause 12 (3AA).
- [14] Part 1, Division 2, Subdivision 4, heading**
Insert after clause 13:
Subdivision 4 General use zone
- [15] Clause 15 Protection of animals, plants and habitat in general use zone**
Insert after clause 15 (2):
(3) A contravention of subclause (1) is designated as a forfeiture offence.
Note. See section 36 of the Act and clause 29 of the *Marine Parks Regulation 2009*.
- [16] Part 1, Division 2, Subdivision 5, heading**
Insert after clause 17:
Subdivision 5 Special purpose zone
- [17] Clause 18A Protection of animals, plants and habitat in general use zone**
Insert after clause 18A (2):
(3) A contravention of subclause (1) is designated as a forfeiture offence.
Note. See section 36 of the Act and clause 29 of the *Marine Parks Regulation 2009*.

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Marine Parks Regulation 2009

Schedule 2 Amendment of Marine Parks Regulation 1999

[18] Part 1, Division 3, heading

Insert after clause 18C:

Division 3 Regulation of activities

[19] Clause 19 Possession of animals or plants or of equipment used to take animals or plants

Insert after clause 19 (3):

(3A) A contravention of subclause (1)–(2A) is designated as a forfeiture offence.

Note. See section 36 of the Act and clause 29 of the *Marine Parks Regulation 2009*.

[20] Clauses 20A and 25

Omit the clauses.

[21] Part 1, Division 4, heading

Insert after clause 30:

Division 4 Miscellaneous

[22] Note before clause 31 and clauses 31–32M, 33–38 and 38B–40

Omit the note and the clauses.

[23] Schedule 1 Zoning plans for marine parks

Insert “**Zoning Plan**” after “**Park**” in the heading to Part 5.

[24] Schedule 1

Transfer Parts 1–6 from the Schedule to after Part 1 of the Regulation and renumber them as Parts 2–7, respectively.

[25] Schedules 1 and 2

Omit the Schedules.

[26] The whole Regulation (as amended by this Regulation)

Renumber each clause so that the clause has 2 numbers separated by a decimal point, with the first number being the number of the Part in which the clause appears and the second number being the appropriate consecutive number according to the position of the clause in the Part, and amend any cross-reference in the Regulation to a renumbered clause (including in any notes) by renumbering the cross-reference accordingly.

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Marine Parks Regulation 2009

Amendment of Marine Parks Regulation 2009

Schedule 3

Schedule 3 Amendment of Marine Parks Regulation 2009

Schedule 1 Penalty notice offences

Immediately following the renumbering of the *Marine Parks (Zoning Plans) Regulation 1999* by Schedule 2 [26] to this Regulation, renumber the cross-references to offences under the *Marine Parks (Zoning Plans) Regulation 1999* in Column 1 of Schedule 1 to this Regulation accordingly.