



# Marine Parks Authority

Questions and Answers

## Marine Parks Regulation 2009

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### **1. Why has the Marine Parks Regulation 1999 been remade?**

Provisions of the Marine Parks Regulation 1999 that did not relate to zoning plans were due for automatic repeal on 1 September 2009 as part of the regular review of regulations that takes place under the *Subordinate Legislation Act 1989*. Many provisions were found to remain relevant to management of marine parks and have been remade in the Marine Parks Regulation 2009 which commences at the end of 31 August 2009.

Amendments to the *Marine Parks Act 1997* that commenced in mid-2008 established clear procedures for reviewing and amending zoning plans. These amendments necessitate that some structural changes are made to the Marine Parks Regulation 1999 to separate provisions related to zoning from 'general' provisions.

Remaking the Regulation has provided an opportunity to improve the structure of clauses, which will in turn assist with interpretation.

### **2. How has the Marine Parks Regulation 1999 been remade?**

Provisions of the Marine Parks Regulation 1999 that do not relate to zoning plans have been remade as the Marine Parks Regulation 2009, together with new provisions. The remaining provisions of the Marine Parks Regulation 1999 will be directly amended to become the Marine Parks (Zoning Plans) Regulation 1999 on 31 August 2009.

The main changes made are structural in nature, with provisions split between the two Regulations.

A Regulatory Impact Statement was prepared to assess the proposed Marine Parks Regulation 2009 and describe the proposed Marine Parks (Zoning Plans) Regulation 1999. It is available from the Marine Parks Authority website ([www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au)) or telephone 131 555 for a copy.

### 3. What provisions does the Marine Parks Regulation 2009 contain?

The Marine Parks Regulation 2009 contains mainly consent procedures, procedures for permits, functions of rangers and the Authority, miscellaneous matters and penalty notice offences.

It also contains all regulatory matters pertaining to marine parks other than zoning plans and related provisions. The provisions of this Regulation apply to all marine parks in New South Wales and continue to be subject to staged repeal under the *Subordinate Legislation Act 1989*.

Specific changes include:

- Seizure of items and forfeiture offences

New provisions on the seizure of items in marine parks aim to deter illegal commercial fishing activities in marine parks. Currently, marine parks rangers can seize items such as fishing gear in relation to a marine parks offence.

These provisions have been extended to include the seizure of boats and motor vehicles where:

1. they are being used in illegal commercial fishing activities  
and
2. an offence committed is defined as a forfeiture offence.

Forfeiture offences include:

- offences against closures
- offences designated in the Regulation to be serious offences (e.g. relating to protected species or sanctuary zones)
- offences relating to the protection of plants, animals and habitat in habitat protection, general use and special purpose zones, and possession of animals/plants or equipment used to take them.

Forfeiture of seized boats and motor vehicles may be ordered by a court. These new provisions are equivalent to those applied under successive fisheries management regulations since January 1995, including for aquatic reserves.

- Penalty-related provisions

Penalty infringement notice amounts for bringing or leaving unattended domesticated animals in marine parks are increased from \$200 to \$300 to align with similar offences under Companion Animals Legislation and National Parks and Wildlife Legislation. This better aligns the management of marine parks and adjacent lands.

A new penalty notice offence has been added for possession of an animal or plant in a part of a marine park in which the possession of the animal or plant is prohibited by the zoning plan for the marine park. 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)). This corrects a previous oversight.

- Marine park advisory committee membership

A new provision enables any member of a local marine park advisory committee to hold office for more than eight years if, in the opinion of the Ministers, no other person is available to adequately represent those interests (clause 28). This provision assists in the formation of advisory committees in small communities such as Lord Howe Island and for obtaining advisory committee members from specialised stakeholder groups such as marine scientists.

- Structural changes

Structural changes have been progressed to make the Regulation more user-friendly. For example, clauses regarding consent procedures have been re-ordered into a more logical sequence.

#### **4. What provisions will the Marine Parks (Zoning Plans) Regulation 1999 contain?**

This Regulation will contain provisions related to zoning, including objects of zones, general provisions for zones and zoning plans. As zoning plans are currently subject to a statutory review process under the *Marine Parks Act 1997*, there is no review of zoning plans connected with these amendments.

Specific changes include:

- Objects of zones

The objects of habitat protection zones have been modified to provide greater clarity, and thus assist in interpretation. The previous objects distinguish between 'not significant' and 'negligible' impacts. This unnecessary distinction has caused confusion for some stakeholders.

- Traditional use

An oversight related to consent for traditional use has been rectified enabling consent for harm to plants, animals and habitat in habitat protection zones to be given for traditional use activities, which is already the case for all other types of zones.

- Structural changes

Structural changes to make the Regulation more user-friendly have been made. Decimal numbering of clauses within zoning plans has been introduced to improve the ability to locate and reference individual clauses of the plans. This change aligns the Regulation with the current best practice in legislative drafting.

The entire set of amendments that will establish the Marine Parks (Zoning Plans) Regulation 1999 on 31 August 2009 is in Schedule 2 of the proposed Marine Parks Regulation 2009.

#### **5. How will the changes affect park users?**

The changes to the Regulation are largely structural in nature and are not expected to have any significant impacts on the community as zoning plans have not changed (other than structural changes).

Forfeiture and penalty related provisions will only impact on people undertaking activities that are already illegal.

Information on the costs and benefits of the proposed Regulation on individuals, the community and businesses can be found in the Regulatory Impact Statement.

#### **6. What community consultation informed the development of the Marine Parks Regulation 2009?**

The proposed Marine Parks Regulation 2009 and Regulatory Impact Statement was on public exhibition for 28 calendar days from 15 May 2009 to 12 June 2009. An information package was published on the Marine Parks Authority website.

Public notices appeared in the NSW Government Gazette and in daily and local newspapers circulating in areas adjacent to each marine park. Approximately 70 peak stakeholder groups were advised directly of public exhibition by email, and also followed up with reminder emails and phone calls during the public exhibition period.

The stakeholder based Marine Parks Advisory Council, a peak body was consulted throughout the development of the Regulation. Meetings were also held with local marine park advisory committees and with peak recreational fishing stakeholders at the request of the Advisory Council on Recreational Fishing.

At 12 June 2009, the webpage with the proposed Marine Parks Regulation 2009 had been viewed about 560 times and the proposed Regulation itself had been downloaded from the Authority's website more than 1800 times.

A total of 26 submissions were received and considered in finalising the Regulation. Further information is included in the Summary of consultation and submissions on the Marine Parks Authority website.

## **7. What changes were made to the proposed Regulation following public exhibition and in response to submissions?**

The following changes were made to the proposed Regulation following public exhibition, including in response to submissions:

- Clause 9(d) originally referred to “any operational plan for the marine park adopted by the relevant Ministers pursuant to section 25 (4) of the Act”. Amendments to the Marine Parks Act mean that the power to adopt operational plans now lies with the Authority, and this clause has been updated accordingly.
- Clause 20(2)(b) has been expanded to refer to economic impacts, in addition to environmental, cultural and social impacts, as a matter requiring consideration before any determination is made to limit the number marine park permits issued to undertake an activity. For example, permits are currently issued to undertake commercial activities including charter fishing, dolphin and whale watching in marine parks.
- Clauses 21 and 22, as originally proposed, gave marine park rangers the power to remove, respectively, persons or property from the marine park where the person or property is (among other things) is “causing inconvenience to any other person in the marine park”. The term “causing inconvenience” has been deleted and the power more narrowly defined. Marine park rangers can direct the removal of people or property if unreasonably interfering with operations of the Marine Parks Authority or unreasonably interfering with the public use or enjoyment of the marine park.
- Clause 25 has been amended to make it clearer that a person does not commit an offence for anything done under the direction of a marine park ranger, or by a marine park ranger in the exercise of their functions.

## **8. Does the new regulation make changes to zoning plans?**

There are no proposed changes to the substance of zoning plans under the Marine Parks Regulation 2009. Zoning plans will continue to be reviewed and amended, if required, using procedures of the *Marine Parks Act 1997* itself.

The only proposed changes to zoning plans are structural (i.e. that will change the location and numbering of zoning plans). Zoning plans will become separate parts of the proposed Marine Parks (Zoning Plans) Regulation 1999 and decimal numbering of clauses will be introduced to improve the ability to locate and reference individual clauses of the plans.

## **9. Where can I get further information?**

Further information on the Marine Parks Regulation 2009 is available on the Marine Parks Authority website at [www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au).

Alternatively, please contact the Marine Parks Authority by telephone at 1300 361 967, email to [regulation@mpa.nsw.gov.au](mailto:regulation@mpa.nsw.gov.au), or by fax to (02) 9585 6544.