

Summary of engagement and submissions for the proposed Marine Estate Management Regulation 2017

August 2017

Introduction

This document provides a summary of engagement and submissions provided during the public exhibition period on the proposed Marine Estate Management Regulation 2017 (the Regulation).

The Regulation is one of two Regulations that support the *Marine Estate Management Act 2014* (MEM Act) to manage marine parks and aquatic reserves. The other regulation is the Marine Estate Management (Management Rules) Regulation 1999 (MEM(MR) Regulation).

The Regulation is due for staged repeal on 1 September 2017 under the *Subordinate Legislation Act 1989*. It is proposed to re-make the Regulation with amendments to improve and streamline the management of marine parks and aquatic reserves.

The objectives of stakeholder and community engagement for the proposed Regulation are to:

- Inform and consult with stakeholders and the general community on the draft Marine Estate Management Regulation 2017 and proposed amendments.
- Provide clear and consistent communications to stakeholders and the community.
- Manage expectations about the proposed amendments and their effects.
- Provide feedback on how stakeholder and community views were taken into account.

Engagement approach

The proposed Marine Estate Management Regulation 2017 and Regulatory Impact Statement were placed on public exhibition for 28 calendar days from 12 June to 9 July 2017.

Stakeholders were notified by:

- A public notice in the Government Gazette on 9 June 2017.
- Public notices in the Daily Telegraph, Sydney Morning Herald and Koori Mail.
- A media release distributed on 16 June 2017 – *Consultation begins on the proposed Marine Estate Management Regulation*.
- The [marine estate website](#) and the NSW Government's 'Have your say' website.
- Direct notices e-mailed to over 200 peak stakeholder groups on 9 June 2017.
- Emails to the Chair of each Marine Park Advisory Committee so they could inform committee members.

An information pack was available from the 9 June 2017 on the [marine estate website](#) which included a copy of the proposed Regulation, the four proposed amendments, a submission form and answers to frequently asked questions. This information was also made available through all Marine Park and Fisheries offices for people without computer access and with an option to post their submission.

Submissions received

A total of 16 submissions were received from stakeholders groups and community members (Table 1). All submissions were reviewed and considered to finalise the proposed Regulation. A late submission from NTSCORP Limited was accepted on 14 July 2017.

Table 1 Details of submissions on the proposed Marine Estate Management Regulation 2017

No.	Stakeholder	Confidential submission	Main uses or benefits derived from marine parks and/or aquatic reserves
1	Kathleen Cheers, Representative of Great Lakes Marine Park	No	Commercial fishing Research Swimming
2	Garry O'Dell	No	Tourism Events
3	–	Yes	Recreational fishing Boating Surfing
4	Jason Ruszczuk, Northern Beaches Council	No	Conservation Education Tourism
5	Rachel Walmsley, Environmental Defenders Office NSW	No	Conservation
6	Tricia Beatty, Professional Fishermen's Association	No	Commercial fishing Conservation Health and well-being
7	–	Yes	Recreational fishing Research Health and well-being
8	–	Yes	Scuba diving Surfing Conservation
9	Philip Creagh, Narooma Port Committee	No	Recreational fishing Commercial fishing Charter fishing
10	Recreational Fishing New South Wales	No	Recreational fishing Spearfishing Charter fishing
11	Recreational Fishing Alliance of NSW	No	Recreational fishing Conservation Health and well-being
12	Serge Killingbeck	No	Snorkeling Boating Cultural use
13	Rachel Fitzhardinge	No	Conservation Snorkeling Swimming
14	New South Wales Aboriginal Land Council	No	Cultural use
15	Byron Bay Deep Sea Fishing Club	No	Recreational fishing
16	NTSCORP Limited	No	Cultural use

Key issues raised and suggested responses

The issues raised with the proposed Regulation and the suggested responses to these issues are summarised in Table 2. Issues raised that were not regulatory in nature are not listed.

Key issues raised with the proposed Regulation were:

- Inclusion of prevention and mitigation of damage to permit assessment criteria could be used to over-regulate permit holders.
- Clause 10(2) should remain in the Regulation or could be modified to allow some activities that are consistent with the objects of the zone e.g. research.
- Extending powers of Clauses 21 and 22 to aquatic reserves and to include 'likely to' interfere with a person's use and enjoyment and 'likely to' cause a significant impact on species or habitats, could lead to misuse of these powers to remove law abiding commercial or recreational fishers or boaters from an area.
- Aboriginal groups to continue to have access to the marine environment for cultural, social and economic purposes and to be actively engaged in any consultation processes.
- Removal of permit requirements for recreational fishing clubs.

Suggested change to the proposed Regulation:

The following change to the proposed Regulation, as a result of stakeholder and community engagement, is recommended to finalise the Marine Estate Management Regulation 2017:

- Clause 22 (1)(b) – do not expand powers for removal of property where 'it is likely to' interfere with a person's use or enjoyment of a marine park or aquatic reserve. Leave as per current [Marine Estate Management Regulation 2009](#) but with extension to include aquatic reserves: 'is unreasonably interfering with a person's use or enjoyment of the marine park or aquatic reserve'.

Table 2 Summary of submissions on the proposed Marine Estate Management Regulation 2017

Clause	Issue raised	Keyword	Response	No. of submissions
RIS	Concern that the figure of \$14.6 billion quoted in the RIS is misleading.	RIS	The wording has been changed to clarify the figure.	1

Amendment 1 – include prevention and mitigation of damage to the criteria for assessing permit applications

Clause 9(h)	Support for proposed changes.	Support	No changes necessary.	6
Clause 9(h)	Inclusion of 'prevention and mitigation of damage' is subjective and could be used to place onerous expectations within permit conditions for fishing clubs, charter boats and commercial fishers.	Subjective Onerous	No changes necessary. Avoiding and mitigating damage to biodiversity (including fish habitat) is best practice for any activities and particularly for developments. As well as preventing the loss of biodiversity and habitat in the first place it helps to prevent the expense of 'making good any damage' for the applicant. The clause is not intended to make it more difficult to obtain permits but to encourage applicants to avoid and mitigate damage and so lead to better outcomes for all stakeholders. Commercial fishers do not require permits for lawful commercial fishing activities in marine parks or aquatic reserves.	1

Clause	Issue raised	Keyword	Response	No. of submissions
Clause 9(h)	Inclusion of 'prevention and mitigation of damage' could be used to restrict anchoring	Anchoring	<p>No changes necessary.</p> <p>Anchoring restrictions are contained in the MEM(MR) Regulation and are set through management planning involving stakeholders and community input.</p> <p>While anchoring areas could be further restricted for activities requiring consent, this would only be done as required to achieve the purposes of marine parks and aquatic reserves specified in the MEM Act and would be in line with normal practice.</p>	1
Clause 9(h)	Over-regulation where multiple permits are required due to jurisdiction overlap of different Government departments and the need to consider 'prevention and mitigation of damage' multiple times.	Over-regulation	<p>No changes necessary.</p> <p>The requirements to obtain consent (in the form of a permit) are set out in the MEM(MR) Regulation, while the proposed Regulation sets out how consent is granted.</p> <p>The requirements to obtain consent are to be reviewed as part of the marine park management pilot project.</p> <p>Consideration of measures to prevent or mitigate damage does not result in over-regulation, or increase the regulatory burden. The change relates to the matters that can be considered in granting consent. In practice, the same effort to prevent or mitigate damage can assist in meeting the requirements of multiple consents.</p> <p>Single permit application forms are being developed for works that require a permit under both the MEM(MR) Regulation and Part 7 of the <i>Fisheries Management Act 1994</i> to avoid duplication on the part of the applicant.</p>	1
Clause 9(h)	Provide permit holders and non-permit holders with mitigation framework and education	Mitigation Education	<p>No changes necessary.</p> <p>Permit process involves discussion with applicants on potential prevention and mitigation measures and conditions are listed within permits.</p> <p>Education programs are undertaken in marine parks by various authorities.</p> <p>Existing policy frameworks provide guidance on measures to prevent or mitigate damage.</p>	1

Clause	Issue raised	Keyword	Response	No. of submissions
Clause 9(h)	Management Authorities accept all mitigation responsibilities and liabilities of any threats and risks that arise as a direct impact of authorised agencies activities (e.g. Police, Life Saving) and non-permit activities (e.g. swimming, surfing)	Mitigation Liability	No changes necessary. Government agencies will continue to conduct their activities in an appropriate way.	1
Clause 9(h)	Assessment criteria for permitted activities within marine parks to include criteria for promoting and prioritising Aboriginal people's rights and interests including Aboriginal cultural fishing.	Aboriginal people Cultural fishing	No changes necessary. The MEM(MR) Regulation includes provisions for traditional uses that satisfy personal, domestic or non-commercial communal needs of Aboriginal people.	1
Clause 9(h)	Does not improve the regulation of events. No definition of activity.	Activity	No changes necessary. The particular activities requiring consent are set out in the MEM(MR) Regulation. The regulation of events is improved by consideration of avoiding and mitigating damage (Clause 9h).	
Amendment 2 – remove Clause 10(2)				
Clause 10(2)	Support for or no issue with removal of 10(2) due to conflicts with MEM(MR) Regulation	Support	No changes necessary.	7
Clause 10(2)	Maintain Clause 10(2) as maintains a higher level of protection for marine park zones and is not in conflict with the MEM(MR) Regulation	Maintain	No changes necessary. Clause 10(2) can effectively block consent for activities such as harming a plant or animal for research, environmental protection, public health, traditional use or public safety that are otherwise consistent with the purposes set out under the MEM(MR) Regulation.	3
Clause 10(2)	Modify Clause 10(2) to include 'and approved scientific research'	Modify	No changes necessary. Clause 10(2) can effectively block consent for activities such as harming a plant or animal for research, environmental protection, public health, traditional use or public safety that are otherwise consistent with the purposes set out under the MEM(MR) Regulation. Rather than amending this subclause to provide for particular activities, future reviews of the MEM(MR) Regulation should consider which activities require consent.	1

Clause	Issue raised	Keyword	Response	No. of submissions
Amendment 3 – extend existing powers in marine parks (Clauses 21 to 24) to aquatic reserves				
Clauses 21 & 22	Support for extending the existing powers for marine parks to aquatic reserves	Support	No changes necessary	4
Clauses 23 & 24	Support for extending the existing powers for marine parks to aquatic reserves	Support	No changes necessary	5
Clauses 21 & 22	Issue with existing Clauses 21 and 22 in relation to removing commercial fishers or their property. Include a clause that ensures that an authorised officer may not move an activity or person if it is being conducted in accordance with the <i>Fisheries Management Act 1994</i> .	Commercial fishing	No changes necessary to Clause 21. Clause 22 is considered further under Amendment 4 below. Authorised officers require these powers to support the operations of marine parks and aquatic reserves, primarily to manage local conflicts among park users that arise from time to time. It is not the intention of these clauses to interfere with lawful commercial fishing activities. Where issues do arise a consultative approach is taken and officers work with commercial fishers on solutions to local issues. Specific and consistent training of authorised officers is provided.	1
Clauses 21 & 22	A range of government officers and not just Fisheries officers have control over recreational fishing activities and that non-Fisheries officers could restrict recreational fishing based on minor complaints.	Recreational fishing	No changes necessary. Authorised officers require these powers to support the operations of marine parks and aquatic reserves, primarily to manage local conflicts among park users that arise from time to time. It is not the intention of these clauses to interfere with lawful recreational fishing activities but where local conflicts arise the community expects authorised officers to deal with those conflicts. Specific and consistent training of authorised officers is provided.	2
Clause 23	Restrictions should apply to entry of heavily fouled vessels into a marine park rather than removal of heavily fouled vessels from a marine park. Also concerned that 'heavily fouled' is subjective.	Heavily fouled vessel	No changes necessary. Authorised officers need the ability to practically manage heavily fouled vessels that have already accessed a marine park or aquatic reserve and to minimise the spread of exotic species. It cannot be assumed that every vessel already in a marine park has only been colonised by endemic species. This also relates to Clause 1.28 of the MEM(MR) Regulation regarding exotic animals and plants.	1

Clause	Issue raised	Keyword	Response	No. of submissions
Clauses 21 & 22	These powers could be used to remove anchored boats and therefore impact on use and enjoyment.	Anchored boats	No changes necessary. These powers already exist for marine parks. Extending the powers to aquatic reserves, allows for consistency in how these areas are managed. Anchored boats could only be removed in a restricted set of circumstances as set out in Clause 22 of the proposed Regulation.	1
Clauses 21 to 24	Amendments do not impede the native title rights and interests of native title holders to participate in cultural fishing.	Native title	No changes necessary. Application of the proposed amendments is not intended to affect native title rights and interests of native title holders to participate in cultural fishing.	
Amendment 4 – expand powers for removal of property (Clause 22) to include ‘likely’ to interfere with a person’s use or enjoyment or ‘likely’ to impact species or habitats.				
Clause 22	Support for the proposed changes.	Support	See below re Clause 22(1)(b).	3

Clause	Issue raised	Keyword	Response	No. of submissions
Clause 22	<p>Subjective terms open to misinterpretation and abuse:</p> <ul style="list-style-type: none"> unreasonable enjoyment likely to 		<p>Delete 'or is likely to interfere with' from proposed Clause 22(1)(b) so that a particular activity must be unreasonably interfering with a person's use or enjoyment of a marine park or aquatic reserve before these powers become available to authorised officers. This also aligns with Clause 21(1)(b).</p> <p>Providing opportunities for public appreciation and enjoyment are secondary purposes of marine parks and aquatic reserves under the MEM Act (ss. 22 and 33).</p> <p>The intent of this clause in the Regulation is to allow authorised officers, primarily fisheries officers, to manage local conflicts that may arise in marine parks and aquatic reserves.</p> <p>Discretion is required in the use of powers by authorised officers but these officers are trained to use powers appropriately.</p> <p>The variable nature of local conflicts and local circumstances in different marine parks mean that prescriptive regulations are unlikely to be effective and so the proposed clause sets out the general issues that can be managed.</p> <p>Extending powers for removal of property <i>where it is likely to cause a significant impact on species or habitats</i> is to be retained in the proposed Regulation. This will allow authorised officers to take proactive steps to seek the removal of property without having to wait until damage occurs to species or habitats.</p>	3
Clause 22	<p>How is 'property' perceived by authorised officers?</p> <p>What protocols, assessment criteria and training programs are in place to ensure Authorised Officers have adequate skills to exercise sound judgement in relation to the seizure of goods?</p> <p>What process is in place if seizures approved by Authorised Officers are linked to departmental bullying or bias?</p>	<p>Authorised Officer</p> <p>Training</p>	<p>No changes necessary.</p> <p>Property includes a vehicle, vessel or mooring under Clause 22 of the proposed Regulation and otherwise would have its usual meaning.</p> <p>Removable property is defined in the MEM Act (s. 63) providing some further guidance.</p> <p>Authorised officers are trained to use powers appropriately.</p> <p>Any accusation of bullying or inappropriate exercising of powers would be dealt with via existing departmental processes.</p>	1

Clause	Issue raised	Keyword	Response	No. of submissions
Comments on the remaining clauses of the MEM Regulation				
All	Support for the remaining clauses of the MEM Regulation to remain the same	Support	No changes necessary	2
All	Better enforcement of restrictions on all fishing and other activities in sanctuary zones.	Enforcement Sanctuary zones	No changes necessary. Strategic enforcement of marine park management rules is addressed through the fisheries compliance program.	1
General comments – MEM(MR) Regulation				
All	Remove the permit requirement for all fishing clubs and organisations to conduct a fishing competition and consider only commercially-based organisations for requiring a permit to operate a specific event in a Marine Park.	Fishing competitions Permit	No changes necessary. The particular activities that require consent to occur in marine parks, including fishing competitions, will be reviewed as part of the marine park management pilot project and the associated review of the MEM(MR) Regulation.	2
All	Remove the requirement to obtain Public Liability Insurance of \$10,000,000 to conduct fishing events within marine parks by fishing clubs. Only appropriate for large organisations or commercial operations.	Insurance Fishing events	The particular activities that require consent to occur in marine parks, including fishing competitions, will be reviewed as part of the marine park management pilot project and the associated review of the MEM(MR) Regulation.	1
All	Commercial and recreational fishing sector to be actively involved in the re-zoning process.	Rezoning	No changes necessary. A review of the zones within marine parks will be undertaken as part of the marine park management pilot project and there will be extensive stakeholder and community engagement as part of that project.	1
All	Engagement and negotiation with Aboriginal people to ensure their values and interests are reflected in management plans, strategies and actions. Including access agreements, recognition of economic interests in Sea Country as well as cultural and social values. Face-to-face consultation with Aboriginal groups.	Aboriginal values and interests Management plans	The marine park management pilot project will test a new approach to management planning in two marine parks (Batemans and Solitary Islands) which includes addressing social, economic and environmental issues. Aboriginal values, interests and activities within marine parks will be considered during the development of the management plans and the review of the associated MEM(MR) Regulation. Appropriate strategies to engage with Aboriginal groups will be included in this process.	2

Evaluation

Between 11 June and 10 July 2017 the [marine legislation webpage](#) with the proposed Marine Estate Management Regulation 2017 was viewed approximately 430 times.

The number of completed submissions received via the online submission form was 13 with another 10 not completed. Three submissions were received via email and a number of key stakeholders contacted staff directly with queries. A staff member was asked to attend a meeting of the Professional Fishermen's Association.

The Professional Fishermen's Association and the Recreational Fishing Alliance included an announcement of the Regulation review via their e-newsletters and made comments on the proposed amendments.

The following media also announced the review of the Regulation:

- Newcastle Herald
- Fishing World
- Narooma News
- Bellingen Courier
- Bombala Times
- ABC South East NSW and ZZZ FM Lismore interviewed the project leader.

Three evaluation questions were included in the submission form:

- Was the submission form easy to understand?
- Did the submission form allow you to say what you wanted to say about the proposed amendments to the Regulation?
- If you 'disagreed' for either of the above two questions, please let us know why you disagreed and how you think the submission form could be improved.

All respondents who used the submission form agreed or strongly agreed that the submission form was easy to understand. Ten respondents agreed or strongly agreed that the form allowed them to say what they wanted to about the proposed Regulation, one didn't know and four disagreed. The four who disagreed made comments as if the form limited them on space to say what they wanted. There was no word limit on any of the key questions.

Warning

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