



New South Wales

# Marine Estate Management Regulation 2017

under the

Marine Estate Management Act 2014

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Estate Management Act 2014*.

GABRIELLE UPTON, MP

Minister for the Environment

NIALL BLAIR, MLC

Minister for Primary Industries

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Marine Estate Management Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following matters:

- (a) the giving of consent by the Minister for the Environment and the Minister for Primary Industries (the **relevant Ministers**) in relation to activities within marine parks and aquatic reserves,
- (b) the functions of authorised officers and the relevant Ministers,
- (c) the seizure of things in marine parks and aquatic reserves,
- (d) the offences under the Act and Regulations for which penalty notices may be issued and the amounts of the penalty payable under the notices,
- (e) the avoidance of double jeopardy,
- (f) an exemption with respect to Australian Defence Force activities,
- (g) savings and formal matters.

This Regulation is made under the *Marine Estate Management Act 2014*, including sections 39, 40, 54 (6), 67 (2) (e), 70 and 83 (the general regulation-making power).

## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Regulation applies subject to other legislation	3
<b>Part 2 Consent of relevant Ministers</b>	
5 Consent for activities	4
6 Applications for consent	4
7 Relevant Ministers may ask for further information	4
8 Must have regard to assessment criteria	4
9 Assessment criteria	4
10 Consent must be refused in certain circumstances	5
11 Consent may be refused in certain other circumstances	5
12 Consent to be given in form of permit	5
13 Permit may be granted subject to conditions	5
14 Permit may authorise others	6
15 Term of permit	6
16 Cancellation of permit	6
17 Suspension of permit	6
18 Variation of permit	7
19 Surrender of permit	7
20 Restriction of number of permits that may be issued	7
<b>Part 3 Functions of authorised officers and relevant Ministers</b>	
21 Removal of persons from marine park or aquatic reserve	8
22 Removal of property from marine park or aquatic reserve	8
23 Removal of heavily fouled vessels from marine park or aquatic reserve	9
24 Information regarding aquaculture or commercial fishing	9
25 Things done by authorised officer or under direction of relevant Ministers	9
26 Delegation of relevant Ministers' functions	9
<b>Part 4 Miscellaneous</b>	
27 Seizure of things in marine parks or aquatic reserves	10
28 Double jeopardy	10
29 Exemption for Australian Defence Force activities	10
30 Saving	10
<b>Schedule 1 Penalty notice offences</b>	<b>11</b>

## Marine Estate Management Regulation 2017

under the

Marine Estate Management Act 2014

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Marine Estate Management Regulation 2017*.

#### 2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Marine Estate Management Regulation 2009* which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

- (1) In this Regulation:

*permit* means a permit under Part 2.

*the Act* means the *Marine Estate Management Act 2014*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (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 65 of the Act.

**Note.** Section 65 of the Act provides that any requirements made by or under Part 5 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*.

- (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 notification or aquatic reserve notification under section 57 of the Act.

## Part 2 Consent of relevant Ministers

### 5 Consent for activities

If this Regulation, the *Marine Estate Management (Management Rules) Regulation 1999* or a marine park notification or aquatic reserve notification under section 57 of the Act 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 or an aquatic reserve must be made in the form approved by the relevant Ministers.

### 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 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 or an aquatic reserve.
- (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 or aquatic reserve.
- (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 54 (6) of the Act, the following matters are the *assessment criteria* for deciding whether or not to give consent to the carrying out of any activity in a marine park or an aquatic reserve:

- (a) the objects of the Act (as specified in section 3 of the Act),
- (b) the purposes of marine parks and aquatic reserves (as specified in sections 22 and 33 of the Act respectively),
- (c) the objects of the zone in which the activity is proposed to be carried out,
- (d) the activities that are permissible in the zone in which the activity is proposed to be carried out (as specified in the relevant management rules),
- (e) any operational plan for the marine park adopted by the Marine Parks Authority pursuant to section 25 (4) of the *Marine Parks Act 1997* (before its repeal) that continues to have effect because of clause 5 of Schedule 2 to the *Marine Estate Management Act 2014*,
- (f) any management plan for the marine park or aquatic reserve,
- (g) 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,

- (h) the form of transport to be used to gain access to the zone in, 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,
- (i) the type of equipment to be used in connection with the proposed activity,
- (j) the arrangements that have been made for the prevention, mitigation and making good of any damage to the marine park or aquatic reserve arising from the proposed activity,
- (k) 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 or an aquatic reserve that, in the opinion of the relevant Ministers, is inconsistent with the objects of the Act or the purposes of marine parks and aquatic reserves.
- (2) 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 or an aquatic reserve if:
  - (a) the application for consent was not made in the approved form, or
  - (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 (and the penalty notices have not been withdrawn and the relevant charges have not been 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 or an aquatic reserve 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 management rules 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.

**16 Cancellation of permit**

- (1) A permit 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 or aquatic reserve,
  - (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 aquatic reserve or to the appreciation, understanding and enjoyment of the marine park or aquatic reserve 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 and the purposes of marine parks and aquatic reserves.
- (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 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.
- (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 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, an aquatic reserve or a zone within a marine park or an aquatic reserve:
  - (a) the maximum number of permits that may be in force at any one time in relation to the marine park, aquatic reserve 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, aquatic reserve or zone as at the time the marine park, aquatic reserve or zone came into existence,
  - (b) the environmental, cultural, social or economic impact of the activity,
  - (c) whether or not any such activity is consistent with the assessment criteria.

## Part 3 Functions of authorised officers and relevant Ministers

### 21 Removal of persons from marine park or aquatic reserve

- (1) An authorised officer may direct a person to leave a marine park or an aquatic reserve or any part of a marine park or an aquatic reserve if, in the opinion of the authorised officer, the person:
  - (a) is unreasonably interfering with, or is likely to unreasonably interfere with, the relevant Ministers' operations in the marine park or aquatic reserve, or
  - (b) is unreasonably interfering with a person's use or enjoyment of the marine park or an aquatic reserve, or
  - (c) has committed an offence against the Act, this Regulation or the *Marine Estate Management (Management Rules) 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) An authorised officer may remove from a marine park or an aquatic reserve, or any part of a marine park or an aquatic reserve, 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 or aquatic reserve

- (1) An authorised officer may direct the person responsible for any property to remove the property from a marine park or an aquatic reserve or any part of a marine park or an aquatic reserve if, in the opinion of the authorised officer, the property:
  - (a) is unreasonably interfering with, or is likely to unreasonably interfere with, the relevant Ministers' operations in the marine park or aquatic reserve, or
  - (b) is unreasonably interfering with a person's use or enjoyment of the marine park or aquatic reserve, or
  - (c) has caused or is likely to cause a significant impact on species or habitats, or
  - (d) has created or 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) An authorised officer may remove (or may arrange for another person to remove) from a marine park or an aquatic reserve, or any part of a marine park or an aquatic reserve, 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 or an aquatic reserve, means:
  - (a) the person who caused the property to be in the marine park or aquatic reserve, 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
  - (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 or aquatic reserve

- (1) An authorised officer may direct the master of a vessel to remove the vessel from a marine park or an aquatic reserve if the authorised officer reasonably believes that the vessel's hull or machinery is so heavily fouled by marine organisms that it poses a significant risk of the introduction of exotic animals or plants into the marine park or aquatic reserve.
- (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 relevant Ministers 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 or an aquatic reserve,
  - (b) a commercial fisher who carries out commercial fishing in a marine park or an aquatic reserve,
  - (c) a fishing employer whose nominated fisher carries out commercial fishing in a marine park or an aquatic reserve,directing the person to provide the relevant Ministers, 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.
- (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*.

### 25 Things done by authorised officer or under direction of relevant Ministers

An offence is not committed under this Regulation or the *Marine Estate Management (Management Rules) Regulation 1999* for anything done:

- (a) by an authorised officer in the exercise of his or her functions as an authorised officer, or
- (b) by a person under the direction of the relevant Ministers or an authorised officer.

### 26 Delegation of relevant Ministers' functions

The relevant Ministers may delegate the exercise of any of their functions under this Regulation or the *Marine Estate Management (Management Rules) Regulation 1999* (other than this power of delegation) to any of the following persons:

- (a) an authorised officer,
- (b) a Public Service employee,
- (c) a person of a class approved by the relevant Ministers.

## **Part 4 Miscellaneous**

### **27 Seizure of things in marine parks or aquatic reserves**

For the purposes of section 67 (2) (e) of the Act, an offence against any of the following provisions is declared to be a forfeiture offence:

- (a) section 62 (1) or (2) of the Act,
- (b) a provision of the *Marine Estate Management (Management Rules) Regulation 1999*, the contravention of which is designated as:
  - (i) a serious offence for the purposes of section 41 of the Act, or
  - (ii) a forfeiture offence.

### **28 Double jeopardy**

A person cannot be convicted of both an offence under this Regulation or the *Marine Estate Management (Management Rules) 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.

### **29 Exemption for Australian Defence Force activities**

- (1) This Regulation and the *Marine Estate Management (Management Rules) 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 relevant Ministers from entering into an arrangement with the Commonwealth with respect to the activities of the Australian Defence Force in marine parks.

### **30 Saving**

Any act, matter or thing that, immediately before the repeal of the *Marine Estate Management Regulation 2009*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Penalty notice offences

For the purposes of section 70 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 41	\$500
Section 62 (1)	\$500
Section 62 (2)	\$500
Section 63 (3)	\$500
Section 68 (3)	\$500
<b>Offences under this Regulation</b>	
Clause 13 (2)	\$500
Clause 21 (2)	\$200
Clause 22 (2)	\$500
Clause 23 (2)	\$200
Clause 24 (2)	\$200
<b>Offences under the Marine Estate Management (Management Rules) Regulation 1999</b>	
Clause 1.13 (1)	\$500
Clause 1.14 (1)	\$500
Clause 1.15	\$500
Clause 1.16 (1) (a)	\$500
Clause 1.16 (1) (b)	\$500
Clause 1.16 (1) (c)	\$500
Clause 1.17 (2) (a)	\$500
Clause 1.17 (2) (b)	\$500
Clause 1.19 (1) (a)	\$500
Clause 1.19 (1) (b)	\$500
Clause 1.19 (1) (c)	\$500
Clause 1.20 (2)	\$500
Clause 1.22 (1) (a)	\$500
Clause 1.22 (1) (b)	\$500
Clause 1.22 (1) (c)	\$500
Clause 1.23 (1)	\$500

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
Clause 1.25 (1)	\$500
Clause 1.25 (1A)	\$500
Clause 1.25 (2)	\$500
Clause 1.25 (2A)	\$500
Clause 1.26 (1) (a)	\$300
Clause 1.26 (1) (b)	\$300
Clause 1.26 (1) (c)	\$300
Clause 1.26 (1) (d)	\$300
Clause 1.26 (1) (e)	\$300
Clause 1.26 (2)	\$300
Clause 1.26 (3)	\$300
Clause 1.27	\$200
Clause 1.28 (1) (a)	\$300
Clause 1.28 (1) (b)	\$500
Clause 1.28 (1) (c)	\$500
Clause 1.29 (1) (a)	\$300
Clause 1.29 (1) (b)	\$300
Clause 1.29 (1A)	\$220
Clause 1.31 (1)	\$300
Clause 1.32 (1) (a)	\$500
Clause 1.32 (1) (b)	\$500
Clause 1.33 (a)	\$300
Clause 1.33 (b)	\$300
Clause 1.33 (c)	\$300
Clause 1.33 (d)	\$300
Clause 1.34 (1) (a)	\$200
Clause 1.34 (1) (b)	\$200
Clause 1.34 (1) (c)	\$200
Clause 1.34 (1) (d)	\$200
Clause 1.35 (2)	\$500
Clause 1.36 (1)	\$500
Clause 1.37	\$500
Clause 1.38 (1) (a)	\$200
Clause 1.38 (1) (b)	\$200
Clause 1.38 (1) (c)	\$500

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
Clause 1.39	\$500
Clause 1.40 (1)	\$200

---