

# Marine Parks Regulation 1999

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New South Wales

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# Marine Parks Regulation 1999



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the [Marine Parks Regulation 1999](#).

### 2 Commencement

This Regulation commences on 1 March 1999.

### 3 Definitions

In this Regulation:

**aquaculture** has the same meaning as in section 142 of the [Fisheries Management Act 1994](#).

**domesticated animal** includes a pet.

**exotic animal**, in relation to a marine park, means any living animal that is not indigenous to the marine park.

**exotic plant**, in relation to a marine park, means any plant (whether or not living) that is not indigenous to the marine park, but does not include food for human consumption.

**fish** has the same meaning as in section 5 of the [Fisheries Management Act 1994](#).

**Note—**

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

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

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

**habitat protection zone** means an area in a marine park that is classified by the zoning

plan for the marine park as a habitat protection zone.

**harm** means:

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

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

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

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

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

**take** an animal includes:

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

**the Act** means the [Marine Parks Act 1997](#).

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

**Note—**

Certain words and terms used in this Regulation are defined in the Act and accordingly have the same meaning as in the Act. These include the following:

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

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

#### 4 Notes

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

## **Part 2 Marine park zones**

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

#### **5 Zoning plans**

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

**Note—**

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

### **Division 2 Sanctuary zone**

#### **6 Objects of sanctuary zone**

The objects of the sanctuary zone are:

- (a) to provide the highest level of protection for biological diversity, habitat, ecological processes, 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.

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

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

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

except with the consent of the Authority.

Maximum penalty: 100 penalty units.

## **8 Aquaculture not permitted in sanctuary zone**

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

### **Note—**

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

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

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

Maximum penalty: 100 penalty units.

## **Division 3 Habitat protection zone**

### **10 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
- (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.

### **11 Protection of animals, plants and habitat in habitat protection zone**

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

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

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

Maximum penalty: 100 penalty units.

## 12 Limited fishing activities in habitat protection zone

- (1) Each of the following fishing activities is permitted in the habitat protection zone of a marine park:
  - (a) the taking of fish by use of a hook and hand held line,
  - (b) the taking of fish by hand,
  - (c) the taking of fish by use of a scoop net or landing net,
  - (d) the taking of fish by use of a spear or spear gun,
  - (e) the taking of fish by any other method permitted by the zoning plan for the marine park.
- (2) A person must not, while in the habitat protection zone of a marine park, take, or attempt to take, any fish unless:
  - (a) the person is engaging in a permitted fishing activity (as referred to in subclause (1)), and
  - (b) the person complies with any restrictions imposed on that activity by the zoning plan for the marine park.

Maximum penalty: 100 penalty units.

- (3) A person does not commit an offence against this clause for anything done with the consent of the Authority.
- (4) In this clause:

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

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

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

### Note—

The *Fisheries Management Act 1994* and the regulations under that Act also set out specific requirements relating to the methods of fishing referred to in subclause (1).

## 13 Aquaculture not permitted in habitat protection zone

Aquaculture is not permissible in the habitat protection zone of a marine park.

### Note—

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



aquaculture is permissible in the relevant area.

## **Division 4 General use zone**

### **14 Objects of general use zone**

The objects of the general use zone are:

- (a) to provide protection 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.

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

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

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

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

Maximum penalty: 100 penalty units.

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

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

Maximum penalty: 100 penalty units.

- (3) A person does not commit an offence against this clause for anything done with the consent of the Authority.

### **17 Aquaculture**

Aquaculture is permissible in the general use zone of a marine park, but only in accordance with the zoning plan for the marine park.

**Note—**

The *Fisheries Management Act 1994* regulates the conduct of aquaculture. In particular, it prohibits a person from undertaking aquaculture except under the authority of a permit issued under that Act and in accordance with the conditions of that permit.

## **Division 5 Special purpose zone**

### **18 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, or
- (b) to cater for special facilities and features in the zone such as slipways, breakwaters, berthing facilities and shipwrecks.

**Note—**

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

## **Part 3 Regulation of activities in marine parks**

### **Division 1 General prohibitions**

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

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

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

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

## 20 Protection of marine park moorings, buoys, signs and facilities

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

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

Maximum penalty: 100 penalty units.

## 21 Exotic animals and plants

(1) A person must not:

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

Maximum penalty: 100 penalty units.

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

## 22 Domesticated animals

(1) A person must not:

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

Maximum penalty: 100 penalty units.

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

### 23 Organised research activities

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

Maximum penalty: 100 penalty units.

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

### 24 Commercial activities

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

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

Maximum penalty: 100 penalty units.

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

#### Note—

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

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

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

- (2) A person must not:

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

Maximum penalty: 100 penalty units.

(3) In this clause:

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

## **26 Organised sporting, educational and recreational activities**

A person must not:

- (a) organise or conduct any sporting competition or tournament in a marine park (such as a fishing competition or tournament), or
- (b) organise or conduct any concert, public meeting, function, event, demonstration or similar gathering in a marine park, or
- (c) organise or conduct any training manoeuvre or similar activity or event in a marine park, or
- (d) organise or conduct any educational program involving the taking of animals or plants from a marine park,

except with the consent of the Authority.

Maximum penalty: 100 penalty units.

## **27 Use of motorised vessels, vehicles and equipment**

- (1) The use of motorised vessels, motorised vehicles and motorised equipment is permitted in a marine park, but only in accordance with the zoning plan for the marine park.
- (2) A person must not, except with the consent of the Authority, use any motorised vessel, motorised vehicle or motorised equipment in a marine park in contravention of the zoning plan for the marine park.

Maximum penalty: 50 penalty units.

(3) In this clause:

**motorised** means powered by a motor, whether or not the motor is in use at the time.

## **28 Camping or residing in marine park**

(1) A person must not:

- (a) camp in any part of a marine park other than in an area set aside by the Authority for camping, or
- (b) attach a vessel, for a period of more than 12 hours, to a mooring or other facility in a marine park that is owned or managed by the Authority, or

(c) reside permanently in a marine park,

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

Maximum penalty: 100 penalty units.

(2) In this clause:

**camp** means reside temporarily (whether or not in a tent, caravan, cabin, vehicle, trailer or other structure).

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

## Division 2

### 29-32 (Repealed)

## Part 4 Miscellaneous

### 33 Removal of persons from marine park

(1) A marine park ranger may direct a person to leave a marine park or any part of a marine park if, in the opinion of the marine park ranger, the person:

- (a) is causing annoyance or inconvenience to any other person in the marine park, or
- (b) has committed an offence under the Act or this Regulation or is likely to commit such an offence.

(2) A person must not fail to comply with such a direction.

Maximum penalty: 50 penalty units.

(3) A marine park ranger may remove from a marine park, or any part of a marine park, any person who fails to comply with a direction under this clause and any vehicle, vessel, animal or other property in the possession of the person.

### 34 Penalty notice offences

For the purposes of section 38 of the Act:

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

### 35 Short description of offences

(1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression

for an offence created by a provision of this Regulation specified in Column 1 of Schedule 2 is:

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

### **36 Delegation**

The Authority may delegate the exercise of any of its functions under this Regulation (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.

### **37 Giving of consent by Authority**

- (1) The consent of the Authority under this Regulation may be given in the form of a licence, permit, approval or other form of written authorisation.
- (2) The Authority's consent may be given:
- (a) generally or in a particular case, and
  - (b) either unconditionally or subject to conditions.
- (3) If the Authority consents to the carrying out of any activity in a marine park, it is a condition of the consent that the activity is carried out in accordance with the zoning

plan for the marine park.

- (4) The Authority is not to give consent to the carrying out of any activity in a marine park or a zone of a marine park that, in the opinion of the Authority, is inconsistent with the objects of the Act or the objects of the zone.

### **38 General defences**

A person does not commit an offence under this Regulation 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.

### **39 Exemption for Defence Force activities**

- (1) This Regulation does 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 Defence Force of Australia).
- (2) This clause does not prevent the Authority from entering into an arrangement with the Commonwealth with respect to the activities of the Defence Force of Australia in marine parks.

### **40 Marine Parks Advisory Council members (marine conservation interests)**

- (1) For the purposes of section 32 (2) (b) of the Act, the Nature Conservation Council (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 Marine Parks 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 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 (3) and (4) apply in relation to an alternative peak group in the same way as they apply in relation to the NCC.
- (6) The amendments to section 32 of the Act made by the *Marine Parks Amendment Act 2000* do not affect the positions held by the members of the Marine Parks Advisory Council immediately before that commencement, and those members continue to hold office (subject to the other provisions of the Act) until the end of the terms for which they were appointed.

## Schedule 1 Zoning plans for marine parks

(Clause 5)

### Note—

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

## Schedule 2 Penalty notice offences and short descriptions

(Clauses 34 and 35)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Offence</b>	<b>Prescribed expression</b>	<b>Penalty</b>
Clause 7 (a)	harm/attempt to harm animal in sanctuary zone	\$500
Clause 7 (b)	harm/attempt to harm plant in sanctuary zone	\$500
Clause 7 (c)	damage/take/interfere with habitat in sanctuary zone	\$500
Clause 9	anchor/moor vessel in sanctuary zone	\$500
Clause 11 (a)	harm/attempt to harm animal in habitat protection zone	\$500
Clause 11 (b)	harm/attempt to harm plant in habitat protection zone	\$500
Clause 11 (c)	damage/take/interfere with habitat in habitat protection zone	\$500
Clause 12 (2)	illegally take/attempt to take fish in habitat protection zone	\$500
Clause 15 (a)	harm/attempt to harm animal in general use zone	\$500
Clause 15 (b)	harm/attempt to harm plant in general use zone	\$500
Clause 15 (c)	damage/take/interfere with habitat in general use zone	\$500
Clause 16 (2)	illegally take/attempt to take fish in general use zone	\$500
Clause 19 (1)	possess animal/plant taken illegally	\$500
Clause 19 (2)	possess illegal equipment	\$500
Clause 20 (a)	remove/move/damage/interfere with mooring	\$300

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Clause 20 (b)	remove/move/damage/interfere with zone/boundary marker/sign	\$300
Clause 20 (c)	place mooring/buoy/sign	\$300
Clause 20 (d)	damage/deface/interfere with Authority property/facility	\$300
Clause 20 (e)	attach vessel to marker buoy	\$300
Clause 21 (1) (a)	bring exotic animal/exotic plant into marine park	\$300
Clause 21 (1) (b)	cause/allow exotic animal to be released into marine park	\$500
Clause 21 (1) (c)	cause/allow exotic plant to be introduced into marine park	\$500
Clause 22 (1) (a)	illegally bring domesticated animal into marine park	\$200
Clause 22 (1) (b)	leave domesticated animal unattended in marine park	\$200
Clause 23 (1)	organise/conduct research activity in marine park	\$300
Clause 24 (1) (a)	sell/hire/attempt to sell/hire/expose/solicit for sale/hire/profit article/thing/service	\$300
Clause 24 (1) (b)	conduct/assist in conduct of amusement/entertainment/instruction/performance/activity	\$300
Clause 24 (1) (c)	take photograph/video/movie/film for sale/hire/profit	\$300
Clause 25 (2) (a)	fail to provide information	\$200
Clause 25 (2) (b)	provide false/misleading information	\$300
Clause 26 (a)	organise/conduct sporting competition/tournament	\$200
Clause 26 (b)	organise/conduct concert/public meeting/function/event/demonstration/gathering	\$200
Clause 26 (c)	organise/conduct training manoeuvre/activity	\$200
Clause 26 (d)	organise/conduct educational activity	\$200
Clause 27 (2)	use motorised vessel/motorised vehicle/motorised equipment in marine park	\$200
Clause 28 (1) (a)	camp in marine park	\$200
Clause 28 (1) (b)	unauthorised mooring of vessel	\$200
Clause 28 (1) (c)	permanently reside in marine park	\$500
Clause 32 (1)	carry out prohibited activity	\$500
Clause 32 (2)	possess animal/plant taken illegally	\$500
Clause 33 (2)	fail to comply with direction to leave marine park	\$200