

## Part 3—Marine parks

The Governor may establish marine parks by proclamation. Areas identified as marine parks are based on the best scientific understanding as well as nationally and internationally endorsed design principles. As far as practicable, the proclamation of a marine park will not immediately affect existing uses in the marine environment. ***Privately owned land will not be included in a marine park.***

The Governor may also proclaim ***interim protection orders***, where necessary, for the orderly and proper management of a marine park until such time as a management plan is adopted. Interim protection orders seek to address ***new or emerging pressures/impacts*** and will be enforced with significant penalties in order to provide the necessary level of protection.

***Management plans*** describe the boundaries of all zones within a marine park. They may also set out other actions the Minister proposes to take, such as day-to-day management, monitoring, interpretive signage, or special conservation needs of plants, animals or habitats in the marine park. Management plans are to be developed as soon as practical rather than within a specified period of time following the proclamation of a marine park. Management plans will not override international laws of the sea and any activity in emergency situations to preserve life or property will not be affected.

The process for developing a ***draft management plan*** includes two formal opportunities for community and stakeholder input. Firstly, the Minister must issue a notice advising the intention to develop a draft management plan. This notice will be placed on a website and appear in both the *Gazette* and a newspaper circulating generally within the State. It is intended that the notice will invite all members of the community to provide any economic, social or environmental information that they wish to have considered during the development of a draft management plan.

A draft management plan must then be prepared to facilitate ***community consultation***. The Minister may seek the views of anyone he/she sees fit at any time to assist in the development of a draft management plan. This could include the establishment of Consultative Committees, with membership drawn from local communities, as well as targeted consultation with any group or individual.

A ***mandatory period of public consultation*** of no less than 28 days will be undertaken on each draft management plan, during which written submissions will be sought. The deciding factor on the timeframe necessary to consult on a draft management plan is the need to effectively engage communities and thoroughly consider issues raised. The Minister will have the ability to forego this process if the proposed changes are minor (eg. correction of an omission or typographical error).

The Minister must consider any submissions received and views expressed during the public consultation period and may amend a draft management plan to take account of any comments. The Minister may then refer a draft management plan to the Governor for adoption.

A regulation will also be developed that will ***specify activities and uses*** that are to be permitted, prohibited or otherwise regulated within each of the marine park zones. This regulation will apply to all marine parks established in South Australia to ensure that restrictions within zones in one marine park are the same as those in other marine parks around the State. The management and enforcement of activities in marine parks that are subject to other legislation (eg. aquaculture, fishing, mining) will remain under their respective Acts. However, these activities may only be undertaken within zones that permit them.

The Minister may implement a ***temporary prohibition or restriction of activities*** in either a marine park, zone or other area for up to 90 days in urgent circumstances (such as to protect human life or biodiversity in emergency situations). This may be extended once for a further 90 days following the initial notification.

Thorough planning and pragmatic zoning, incorporating community and industry input, should ensure that South Australia's marine parks have the least possible impact on existing commercial fishing and aquaculture operations. Notwithstanding these actions, there may be situations where unavoidable

conflict occurs. As such, mechanisms to ***address the effects of displaced effort*** are being established. The fundamental tenet of displaced effort is that the Government will:

- work with industry to review zoning to determine if locations can be identified to deliver the desired conservation outcomes without displacing existing operations;
- work with industry to determine if relocation is viable (in certain circumstances); and
- as a last resort option, buy-out any displaced effort (using a market-based approach).

An ***independent review process***, with further ***appeal to the ERD Court***, is proposed for affected fishers / aquaculture proponents dissatisfied with the outcome of the displaced effort mechanisms.

## Part 4—Administration

The Minister has a range of functions and powers to administer marine parks, including:

- examining and keeping under review the need for areas to be marine parks;
- developing and implementing management plans;
- ensuring necessary restrictions and prohibitions are in place to protect biodiversity;
- consulting with relevant persons, bodies and authorities;
- promoting public education and programs to protect, maintain or improve marine parks; and
- enforcing the general duty of care.

The Minister may also call for ***community nominations*** for areas to be considered as marine parks. It is intended that community nominated areas will be assessed on their merits and against the objects of the Act. Any community nominated area accepted must be proclaimed and have a management plan developed in accordance with the Act.

***Authorised officers*** have a range of powers to administer the operation and enforcement of this Act, and include the ability to:

- enter any place to gather evidence;
- protect marine parks by preventing specific actions;
- enter and inspect any vehicle or give directions to stop the movement of a vehicle, plant or equipment;
- place buoys, markers or other items to assist in environmental testing or monitoring;
- seize evidence and other items;
- require a person reasonably suspected to have committed, is committing or about to commit a contravention of the Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.

Authorised officers require a warrant issued by a magistrate to enter a person's residential premises, use force to enter other places / vehicles, or to request a person to produce specified documents. Authorised officers may be accompanied by such assistants as may be reasonably required.

It is an offence to hinder persons engaged in the administration of the Marine Parks Act (such as failing to answer questions or complying with a direction of an authorised officer, using abusive, threatening or insulting language).

These powers are similar to those provided to officers under the *Fisheries Act 1982* and the *Natural Resources Management Act 2004*.

## Part 5—General duty of care

A ***general duty of care*** requires a person to take all reasonable measures ***to prevent or minimise any harm*** to a marine park through his or her actions or activities. A person acting in circumstances prescribed by the regulations will be acting in accordance with the general duty of care. A person who contravenes the general duty of care is not guilty of an offence. A protection order may be issued to ensure compliance with the general duty of care or a reparation order or authorisation may be issued to address the impact. It is a defence if the breach of the general duty of care was not committed intentionally and defendant took reasonable care to avoid committing the offence.

## Part 6—Protection and other matters

Protection and reparation orders may be used to prevent a breach of the general duty of care or to repair damage done in breach of that duty. If orders are not complied with, the Minister may undertake remedial work to repair the damage and recover the cost of the work from the person or company against whom the order was made.

## Part 7—Appeals to ERD Court

The ERD Court provides independent resolution for all environmental matters and possesses the expertise to assess possible conflicts about enforcing the general duty of care. Matters that may be referred to the ERD Court under the Marine Parks Act include:

- refusal of a permit;
- the revocation of a permit or imposing or varying a condition of a permit; and
- the issue or variation of either protection or reparation orders.

## Part 8—Civil remedies

When a court convicts a person of an offence against the Marine Parks Act, there are a number of tools that may be used in addition to traditional types of penalties. The Court is able to exercise one or more of the following powers that require the person to:

- refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of the Act;
- make good any harm to a marine park, and if appropriate, to take action to prevent or mitigate further harm;
- pay any reasonable costs and expenses incurred by the Minister to prevent or make good harm to a marine park;
- pay an amount in the nature of exemplary damages; and
- take action to publicise the contravention of the Act and/or the harm flowing from the contravention.

In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to any environmental harm or detriment to the public interest, any financial saving or other benefit that the person stood to gain or any other matter relevant to the contravention.

## Part 9—Provisions relating to official insignia

Marine park names and insignia may be used with the Minister's expressed permission for appropriate uses. Goods intended for a commercial purpose that use the official insignia without appropriate Ministerial permission may be seized.

## Schedule 1—Related amendments

Schedule 1 contains a range of related amendments to other Acts to ensure appropriate linkages and integrated decision-making. These Acts include:

- *Aquaculture Act 2001*;
- *Coast Protection Act 1972*;
- *Development Act 1993*;
- *Environment Protection Act 1993*;
- *Fisheries Act 1982*;
- *Harbors and Navigation Act 1993*;
- *Historic Shipwrecks Act 1981*;
- *Mining Act 1971*;
- *Natural Resources Management Act 2004*;
- *Offshore Minerals Act 2000*;
- *Petroleum Act 2000*; and
- *Petroleum (Submerged Lands) Act 1982*.

### For further information contact:

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# Draft Marine Parks Bill 2006 - Overview

*This document provides an overview of key clauses of the draft Marine Parks Bill 2006 and should be read in conjunction with the draft Bill, Explanatory Notes, the Blueprint for the South Australian Representative System of Marine Protected Areas and other information papers.*

The Government of South Australia is committed to establishing a representative system of Marine Protected Areas (MPAs). The core components of this system will be known as 'marine parks' to reflect their multiple-use nature. As outlined in *South Australia's Strategic Plan*, 19 marine parks will be created by 2010. New legislation for the dedication, zoning and management of marine parks is required.

## Part 1—Preliminary

South Australia's marine parks will be zoned for **multiple-use** in order to protect and conserve marine biodiversity (plants, animals and habitats) whilst also providing for the ecologically sustainable use of suitable areas. Four zones are proposed for marine parks and the following descriptions indicate how they will be established under regulation:

- **general managed use zones** - provide protection for species and habitats, whilst allowing ecologically sustainable use;
- **habitat protection zones** - provide protection to species and habitats, whilst allowing activities and uses that do not harm habitats or the functioning of ecosystems;
- **sanctuary zones** - provide protection and conservation for habitats and biodiversity, where the removal or harm of plants, animals or marine products is prohibited; and
- **restricted access zones** - provide protection and conservation for unique and biologically significant habitats, by restricting access and prohibiting the removal or harm of plants, animals or marine products. These zones are generally the smallest component of a marine park.

**Special purpose areas** are considered as an overlay to the zones described above and provide flexible management arrangements for specific purposes (such as the accommodation of existing infrastructure; protection of natural and cultural heritage etc) within a marine park.

## Part 2—Objects Of Act

The primary objects of the Marine Parks Act are to **protect and conserve marine biological diversity and habitats** by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and help maintain the natural functioning of coastal, estuarine and marine ecosystems and their interdependence with one another. In this regard:

- **comprehensive** means that each of the component parts of South Australia's unique marine environments must be represented;
- **adequate** means that they are of a size and nature to make them viable and effective;
- **representative** means those areas selected to represent a particular component should reasonably reflect the diversity.

Secondary objects provide for the protection and conservation of natural and cultural heritage; **ecologically sustainable development** (ESD) and use; and opportunities for public appreciation, education, and understanding of the marine environment when these activities are consistent with the primary objects.