



**Environment,
Climate Change & Water**
National Parks & Wildlife Service



Our reference: DOC10/21069

Mr John Young
Principal Council Officer
Select Committee on Recreational Fishing
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Young

Thank you for the letter of 22 April 2010 enclosing a copy of the transcript of evidence taken at the Select Committee hearing on 19 April 2010, questions taken on notice at the hearing and additional questions on notice from members.

I am pleased to attach a corrected transcript and answers to questions on notice. Industry and Investment NSW have separately answered questions relevant to fisheries management responsibilities.

I acknowledge the additional question on notice relating habitat mapping arising from the Nowra hearing. I confirm that question will be answered together with the additional questions on notice requested of Mr Matt Carr, Manager, Jervis Bay Marine Park.

If you have further questions please do not hesitate to contact Mr Adrian Toovey, Manager, Aquatic Protected Areas on (02) 9585 6589.

Yours sincerely

for  17/5/10
Michael Wright
Director, Protected Area Policy and Programs

Enclosure

**SELECT COMMITTEE ON RECREATIONAL FISHING
INQUIRY INTO RECREATIONAL FISHING**

**DEPARTMENT OF ENVIRONMENT, CLIMATE CHANGE AND WATER
QUESTIONS ON NOTICE**

On 19 April 2010, members of the Committee asked the Department of the Environment, Climate Change and Water;

QUESTION:

1. The telephone survey that you did in the Coffs Harbour region indicated that 87 per cent of respondents were in favour of conserving the marine park. Can you tell the Committee the proportion of those 400 people who were fishermen? (p. 6)

ANSWER:

The 2008 Solitary Islands Marine Park Community Survey Final Report found that non fishers (88%) were more likely than fishers (82%) to be in favour of conserving the Solitary Islands Marine Park. 24% of those surveyed fished in the Solitary Islands Marine Park (97 out of 407 people). The report is accessible from the Marine Parks Authority website (www.mpa.nsw.gov.au).

QUESTION:

2. Comparative figures on no take zones for other Australian States, New Zealand, Canada and the United States? (p. 22)

ANSWER:

Marine protected areas provide varying degrees of protection for marine biodiversity. Different legislative frameworks and circumstances mean that the level of protection afforded by what is labelled a "sanctuary zone" in NSW may not apply to zones labelled "sanctuary" or 'no-take' zone elsewhere, nationally or internationally.

Sourcing complete and up to date comparative for no take zones in Australia and internationally has been problematic as this information is not readily available for 2010. A further progress report on the implementation of Australia's National Representative System of Marine Protected Areas is anticipated to be released in 2010 and will contain up to date comparative figures for Australian jurisdictions. The next update of the Collaborative Australia Protected Area Database¹ administered by the Australian Government should also contain such information.

Based on existing public data, as at 30 June 2009, Western Australia had '12% of its State waters within 13 CALM Act marine parks and reserves (MPRs), and only 2.5% of its State waters under a higher level of protection'². Victoria has 53,776 hectares protected within a 'no take' marine protected area system, representing 5.3% of Victorian waters³. New Zealand has 32,775 hectares of 'no take' marine protected areas representing 0.2% of the mainland territorial sea, which extends 12 nautical miles offshore⁴. NSW has 65,129 hectares of sanctuary zone representing 6.7% of State waters which extend to 3 nautical miles offshore.

¹ <http://www.environment.gov.au/parks/nrs/science/capad/>

² <http://www.dec.wa.gov.au/> (Marine Parks and Reserves Authority Annual Report 2008/09)

³ <http://www.parkweb.vic.gov.au/1bays.cfm>

⁴ Banks S.A. & Skilleter G.A. (2010). Implementing marine reserve networks: A comparison of approaches in New South Wales (Australia) and New Zealand. *Marine Policy* 34: 197-207

The World Database on Protected Areas (WDPA) is the most comprehensive global spatial dataset on marine and terrestrial protected areas available. It is updated annually by the United Nations Environment Program (UNEP) and International Union for the Conservation of Nature (IUCN) World Commission on Protected Areas and can be accessed via the internet at www.wdpa.org.

QUESTION:

3. Some submissions argue that pollution poses a greater threat to fish stock sustainability and species biodiversity compared with recreational fishing. Considering the context of New South Wales marine parks, how correct is this, given that the data from the Department of Environment, Climate Change and Water suggests that almost all estuaries running into marine parks are in good or very good health? (p. 24)

ANSWER:

To conserve the marine environment it is important to manage all known threats to marine biodiversity. Both pollution and resource use such as fishing are widely recognised as key threats to marine biodiversity. The NSW Government delivers complementary programs designed to reduce the impacts of both fishing and pollution, in recognition of this fact.

It is difficult to quantify, on a directly comparable basis, the relative impacts of pollution and fishing on fish stocks and biodiversity because fishing and pollution affect biodiversity and fish stocks in different ways and impacts are often indirect, synergistic and variable over time and space.

In respect of the status of many estuaries in marine parks, it is noteworthy that many areas of each marine park abut coastal national parks and reserves. These areas are afforded significant catchment protection and are likely to support more natural ecological processes upon which the conservation of biodiversity and fish stocks depends. In particular, the protection of shoreline and catchments from habitat clearing, development and pollution sources within national parks provides an important buffer for estuarine and nearshore habitats within marine parks and contributes to better water quality in some areas over others. Recreational fishing impacts on biodiversity are managed through fisheries regulations and additionally through marine park zoning plans.

QUESTION:

4. There are some other programs that the Department of Environment, Climate Change and Water has been running with Industry and Investment NSW, including the re-inundation of the Yarrahapinni wetlands in South West Rocks. We can also provide additional information on that (p. 25).

ANSWER:

In the early 1970s, flood mitigation structures were installed at Yarrahapinni wetlands. The wetlands until that time had been an extensive and highly productive estuarine ecosystem, including 370 hectares of saltmarsh and 110 hectares of mangroves. The flood mitigation works altered natural processes by preventing saltwater entering the wetlands via the Macleay River, and floodwaters to fully drain.

As a result, estuarine vegetation communities were replaced by degraded freshwater and saline wetland communities. In 1997 only 1 hectare of saltmarsh and 0.1 hectares of mangroves remained. Drainage works also contributed to oxidation of acid sulfate soils, to further habitat loss, water quality decline and in turn significant impacts on local aquatic biodiversity including fish.

In 2007, Yarrahapinni Wetlands National Park was established to facilitate restoration of the wetlands to a more natural state reminiscent of the site prior to the flood mitigation works. In the long term, benefits will be significant as water quality will improve and estuarine habitats will be reinstated. The removal of the floodgates and levee wall will improve access for fish species and will improve the overall water quality of the lower Macleay Estuary. It is expected that fish populations will return to the wetlands as a breeding and nursery grounds.

Rehabilitation of the Yarrahapinni Wetlands as an ecologically functional estuarine ecosystem is progressing in stages to ensure positive environmental outcomes for all stakeholders. It is envisaged once the controlled re-inundation is complete and monitoring has established a positive ecological outcome, the floodgate infrastructure and earth levee will be modified or removed to facilitate the natural flow regimes.

In 2007 two tidal flaps were installed enabling restricted tidal flows into the lower reaches of the estuary. In February 2010 one of the five floodgates was opened enabling tidal flows to penetrate further into the wetland. As part of the adaptive management approach water levels and quality have been monitored for the past 18 months, and a significant fisheries research program is in place. The impact of this partial inundation has had a positive improvement in ecosystem function in the estuary. Fish and invertebrate species are quickly returning to the estuary with a noticeable increase in species diversity and numbers. An increase in bird species feeding in the wetland has also been observed.

Industry and Investment NSW is a significant partner and contributor to the rehabilitation project. The whole of the Yarrahapinni Wetlands National Park has been protected from recreational fishing under Schedule 2 of the Fisheries Management (General) Regulation (2002) to support the rehabilitation efforts.

QUESTION:

5. When you receive responses from people relating, for example, to whether they think there are benefits in having a marine park, are you getting strong responses from boating and fishing people? Obviously the boating people are also possible fishers. The number of fishermen who are responding represents approximately one-third of respondents, but if you include boating that figure might be higher. (p. 26)

ANSWER:

The community surveys for the Solitary Islands Marine Park and Jervis Bay Marine Park asked respondents how often they participated in fishing, snorkelling/diving, boating, and beach activities including swimming, walking and surfing within the marine park. Respondents were then categorised into activity subgroups reflecting the activities they participated in, and survey responses were analysed across each activity group. If respondents participated in more than one activity, they were placed into more than one activity group. This means that boaters who fished were placed

into both the 'boating' and 'fishing' activity groups. Hence the 'boating' and 'fishing' activity groups overlap and cannot be added together.

As a consequence of this methodology, both surveys found broadly consistent responses from persons identifying as boaters and fishers. For example, in the Jervis Bay community survey 76% of fishers and 76% of boaters were in favour of sanctuary zones. For Solitary Islands 68% of fishers and 70% of boaters were in favour of sanctuary zones. Further, 82% of fishers and 85% of boaters thought Solitary Islands Marine Park was important and 90% of fishers and 88% of boaters thought Jervis Bay Marine Park was important.

A recent survey relating to Lord Howe Island Marine Park found that 98% of non-fishing respondents were strongly in favour, or in favour of the marine park. Amongst respondents identifying as fishers 95% were strongly in favour or in favour of the marine park.

QUESTION:

5. From an environmental perspective, did your department have to give approval for the sinking of the HMAS *Adelaide*? (p. 30)

ANSWER:

Under the *Coastal Protection Act 1979*, offshore activities that do not require consent or approval under the *Environmental Planning and Assessment Act 1979* require Ministerial concurrence. The concurrence role aims to protect the coastal environment of NSW and provides that the Minister may only consider whether or not a proposed activity adversely affects, or is adversely affected by, coastal processes such as wave action (section 44 of the Act).

The Land and Property Management Authority (LPMA) is the lead agency for the ex-HMAS *Adelaide* project and undertook an environmental assessment to determine any potential adverse impacts. The Department of Environment, Climate Change and Water (DECCW) was represented on a working group to facilitate the project and provided comment prior to the formulation of the environmental assessment so that potential issues could be addressed.

DECCW officers assessed the Review of Environmental Factors provided by LPMA for the proposal. It was considered that the scuttling of the ex-HMAS *Adelaide* offshore of Avoca Beach will not adversely affect or be adversely affected by coastal processes. As a consequence, it was recommended that Ministerial concurrence be issued without conditions.

On 17 February 2010, the Minister for Climate Change and the Environment gave concurrence to the LPMA to the proposed scuttling of the ex-HMAS *Adelaide* in accordance with the accompanying Review of Environmental Factors.

The Department of Environment, Climate Change and Water did not have to give approval for the sinking of the HMAS *Adelaide* under the *Protection of the Environment Operations Act 1997*. This is because the sinking of the HMAS *Adelaide* is not an activity described in the *Protection of the Environment Operations Act 1997* as an activity that requires a licence to be issued.

QUESTION:

6. Is it correct that fishing gear must be unrigged (in a sanctuary zone)? (p. 31)

ANSWER:

As confirmed by Departmental officers during evidence at the Nowra and Port Stephens hearings, and during the Committee's tour of Jervis Bay Marine Park, the answer depends on whether a person is transiting a sanctuary zone or is anchored, moored or aground in a sanctuary zone.

If a person is transiting a sanctuary zone (i.e. travelling from one place where the fishing gear can be legally used to another place the gear can be legally used) the fishing rod may be 'fully rigged', provided no part of the line is immersed in the water and no hook is baited. In the case of spears they must be stowed and in the case of nets, no part of the net is to be in the water.

If a person is anchored, moored or aground in a sanctuary zone then fishing gear must be in an "*unrigged state*". In relation to a fishing line, this means no part of the fishing line is attached to any hook, artificial lure, artificial fly, swivel or other piece of fishing tackle (other than any reel the fishing line is spooled on). In the case of a fishing net, no part of the net is immersed in the waters of the marine park, and in the case of other fishing gear, the gear is stowed away. In this circumstance the term 'stowed' means: contained, or covered and secured or packed away. (For example, a speargun strapped to the hull or covered or in a hold would be considered stowed. A speargun lying on the deck of vessel would not be considered stowed.)

Information clarifying these arrangements is accessible from the Marine Parks Authority website (www.mpa.nsw.gov.au) and was tabled by Departmental officers at the Port Stephens hearing. A letter of 25 August 2009 provided to the Advisory Council on Recreational Fishing clarifying this issue is attached at Tab A.

QUESTION:

7. Mr WRIGHT: Indeed. Those enforcement guidelines I mentioned earlier deal with this very issue. So there is discretion to issue the penalty infringement notice to the skipper of the vessel where it can be shown that the skipper knew he should not have been there but his passengers did not.

CHAIR: In relation to that particular document, if it is not in the documentation that was tabled today you will provide it?

Mr WRIGHT: That is correct.

CHAIR: And the memorandum of understanding?

Mr WRIGHT: Yes, we can also provide that. (P32)

ANSWER:

As referred to during the hearing, an '*Operational Agreement for Compliance within NSW Marine Parks, and in State Waters outside those marine parks*' was established in April 2008, by the then Department of Environment and Climate Change and Department of Primary Industries. The agreement remains in operation and ensures a clear understanding of agency roles in implementing compliance in both marine parks and State waters and to facilitate improved cooperation, coordination and delivery of compliance programs. A copy of the agreement is attached at Tab B. Under the agreement, the *DPI Fisheries Compliance and Procedures Manual 2006* generally applies in relation to fisheries and marine park compliance. In addition,

'*Supplementary Enforcement Guidelines*' (refer to Tab C) have been adopted by the Marine Parks Authority to support and clarify enforcement actions and officer discretion within marine park boundaries.

QUESTION:

9. Beach access in marine parks and the usage by recreational fishers of four-wheel drives upon the beaches and the impact on the benefit community, which is all part of the food chain and there is quite a bit of debate about vehicle usage in those areas impacting on the food chain, although it is obviously not noticeable but in the sand and also for specific species. Has there been research on that with regard to marine parks and is this having or will it have an impact in terms of recreational beach fishing that uses motor vehicles? (p. 36)

ANSWER:

The impact of four-wheel drive vehicles on sandy beach invertebrates has been examined in Solitary Islands Marine Park through an honors and masters research project. The attached extracts (Tab D) from the *Solitary Islands Marine Park Research Projects Summaries* document which is accessible from the Marine Parks Authority website (www.mpa.nsw.gov.au) provide summary information on these projects.

Vehicle access restrictions already apply on some beaches within Solitary Islands Marine Park as a consequence of the current zoning plan and adjacent land management arrangements. The Marine Parks Authority will continue to work with user groups and local councils to address any inconsistencies between management of the marine park and adjacent lands.

Recent research on sub-lethal effects of off-road vehicles on surf clams (pipis) inhabiting beaches included work in Cape Byron Marine Park (Sheppard *et al.* 2009, *Journal of Experimental Marine Biology and Ecology*, vol. 380, pp.113–118). This study concluded that "off-road vehicles significantly impair the burrowing performance and some aspects of the body condition of clams on sandy beaches. Such traffic-induced changes to organism performance may increase mortality by causing displacement to less favourable habitats by swash, and intensifying the risk of predation and desiccation. When assessing the ecological impacts of vehicles on beach fauna, it is thus important to consider both lethal and sub-lethal effects".

Any issues relating to beach access restrictions in a marine park can be considered during the review of the relevant marine park zoning plan.

Additional questions on notice from members

QUESTION:

5. A number of submissions also made reference to what they saw as overzealous enforcement, particularly in Marine Parks.

Are offences within Marine Parks monitored to identify trends?

ANSWER:

Marine parks and fisheries compliance staff are authorized to enforce both the *Fisheries Management Act 1994* and *Marine Parks Act 1997*. The officers operate under consistent enforcement policies and guidelines, and use the Nautilus compliance database system developed by Industry & Investment to record compliance data. Marine park compliance trends are monitored on a quarterly basis. All enforcement actions, including written cautions and penalty notices issued and prosecutions under the *Marine Parks Act 1997*, *Fisheries Management Act 1994*, *Protection of the Environment Operations Act 1997* and *National Parks and Wildlife Act 1974* are included in the analysis. The type of offences, for example harming animals in a sanctuary zone; use of prohibited gear; violation of size and bag limits are also recorded and included in compliance reports, as is location based information. Analysis of compliance trends is intended to assist communication and education initiatives, as well as local compliance planning.

QUESTION:

6. Can you explain how Aboriginal cultural fishing rights fit within the current regulatory and legislative regime?

ANSWER:

As indicated by Industry and Investment NSW, Aboriginal cultural fishing is now formally recognised within the objects of the *Fisheries Management Act 1994* which applies to all NSW waters, including marine parks.

The Marine Parks Authority recognises that the Aboriginal people of NSW have a continuing custodial relationship with 'Country', the land and sea and its resources. This extends to maintaining spiritual links to and caring for Country. The involvement of Aboriginal people in the zoning and management of marine parks is encouraged through representation on marine park advisory committees, local Aboriginal Advisory Groups, and through the establishment of memoranda of understanding with Aboriginal communities.

The Marine Parks Authority currently provides for cultural resource use through special purpose zones established under the *Marine Parks (Zoning Plans) Regulation (1999)*. Special purpose zones for traditional use are in place at Arrawarra Headland in the Solitary Islands Marine Park; Tallow Creek and Belongil Creek in Cape Byron Marine Park; and Snake Island in Batemans Marine Park.

At the request of Traditional Owners, Aboriginal Owners, or Registered Native Title claimants the Marine Parks Authority will participate in the development of cultural resource use agreements to facilitate Aboriginal cultural fishing activities that may otherwise be prohibited under a marine park zoning plan. To support cultural events,

marine park permits may also be issued in conjunction with fisheries permits to allow individuals and groups to undertake Aboriginal cultural fishing.

A Policy on Aboriginal Engagement and Cultural Use of Fisheries Resources in NSW Marine Parks is currently being finalised.

QUESTION:

13. The submission details the process followed for the creation of the Port Stephens Great Lakes Marine Park. On page 18 it details changes, including boundary adjustments, made to the draft zoning plan in order to improve recreational fishing access.

Did these changes compromise biodiversity outcomes?

ANSWER:

Changes were made to the draft zoning plan to improve recreational fishing access in response to issues raised during the public consultation process. However, the final zoning plan still provides comprehensive, adequate and representative samples of marine biodiversity within the bioregion. For example, while the sanctuary zone area offshore from Broughton Island was reduced to provide better fishing access to an important rocky outcrop on the southern side of the Island, the Seal Rocks sanctuary zone area was increased to better represent deep water habitats. Sanctuary zone areas also increased within the enclosed waters of Port Stephens.

QUESTION:

14. The submission (pg 19) notes the zoning plan for the Port Stephens Great Lakes Marine Park is due for review in 2012 to determine whether it continues to meet the objects of the Marine Parks Act. A large number of submissions from recreational fishers have called scientific evidence to demonstrate that Marine Parks are meeting their stated objectives.

Can you summarise what information the review will use to determine if the objects of are being met?

ANSWER:

The *Solitary Islands Marine Park Zoning Plan Review Report* and *Jervis Bay Marine Park Zoning Plan Review Report* were tabled at the hearing on 19 April 2010 and demonstrate the approach taken to review of zoning plans.

The zoning plan will be assessed against a set of criteria based on zoning guidelines to determine whether the objects of the Marine Parks Act continue to be met. New information from research and monitoring programs will inform the assessment of the zoning plan. For example, new data from the seabed mapping program would be used to assess whether all habitat types in the marine park are adequately represented in sanctuary zones. Other research projects on biodiversity, habitats and ecosystems and ecological processes occurring in the park will be used as well as social and economic information such as the ways in which the park is viewed and used by the local community and visitors will also be used. As reflected in the most recent reviews, the views of the community raised in submissions and through consultation meetings will also be an important source of information to assess

whether the zoning plan remains appropriate for meeting the objects of the Act. Any relevant new knowledge on marine protected areas more generally will also be considered during the review.

QUESTION:

15. A number of submissions have called for certain types of fishing activity to be allowed within sanctuary zones, such as seasonal fishing access for certain species of transient fish.

Is there potential for allowing limited and restricted fishing access to sanctuary zones without compromising its integrity and purpose?

ANSWER:

The object of sanctuary zones, as stated in the Marine Parks (Zoning Plans) Regulation 1999 is:

- (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.

Harm is defined in the Marine Parks (Zoning Plans) Regulation as:

- (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).

While there is typically a lower mortality rate for fish caught and released than those harvested for food, mortality rates of released fish vary extensively (between zero and near 100%) and are influenced by a number of factors including environmental conditions, fishing gear, angler behaviour, and species-specific characteristics. Although many fish do survive following release, this is not always the case.

In this context, catch and release fishing activities still constitute ‘harm’ and could not be permitted in a sanctuary zone. It is also important to recognise that sanctuary zones provide important controls sites through which we can better understand the impacts of fishing. Further research could be undertaken to explore the utility of catch and release areas within habitat protection zones.

Fishing for transient species is allowed in adjacent habitat protection and general use zones, the zones which comprise the vast majority of marine park waters.

QUESTION:

16. The submission notes (pg 11) that statutory reviews of Marine Park zoning plans occur five years after commencement and then at ten yearly intervals.

Is there potential for reduction in sanctuary zones or only potential for expansion?

ANSWER:

There are no predetermined outcomes for zoning plan reviews and the NSW Government has not adopted any specific targets for percentages of habitats to be represented in sanctuary zones. The best available information will be used to determine whether any changes are necessary to zoning plans to conserve biodiversity, maintain ecological processes and provide opportunities for ecologically sustainable use, public enjoyment, appreciation and understanding.

QUESTION:

17. For each sanctuary zone in each NSW Marine Park can you provide the Committee with a list of the fish and marine vegetation species, populations and ecological communities that were the basis for the creation of the zones? Can you also provide information on the health/state of these populations at that time and any information on their current health and state?

ANSWER:

NSW marine parks aim to protect all marine biodiversity. Other groups of species, for example, molluscs, corals and sponges, marine mammals and reptiles and birds are important to protect in addition to fish and marine vegetation.

Complete information on marine species, population and ecological communities are rarely, if ever, available, in NSW or anywhere. Given limited fine scale information, ecosystems and habitats are used as 'surrogates' for biodiversity. Habitats are more easily measured or mapped than individual species typically associated with them. For example, seagrass habitats contain a distinct range of fish and invertebrate species compared to adjacent unvegetated areas. Seagrass flora and fauna, includes algal epiphytes, crabs, shrimps, fishes, hydroids, sponges, bryozoans, ascidians, amphipods, polychaetes, gastropod molluscs, bivalve molluscs and sea cucumbers. Just the infauna (fauna living in the sediment) in the seagrass can consist of at least 360 species. They are an important habitat for juvenile commercial and recreational species such as snapper, yellow-fin bream, tarwhine and luderick. These patterns are consistent across the state, and therefore habitat type can be used to represent those particular assemblages of plants and animals.

Similarly, rocky reefs located at different depths generally contain a different suite of species, although this is less distinct for many highly mobile fishes. Shallow reefs are dominated by beds of macroalgae and areas of 'barrens' where sea urchins have overgrazed the algal beds resulting in areas containing mostly coralline algae and a low diversity of invertebrates. Reefs those in deeper water contain mostly sponge dominated assemblages. Such patterns are also consistent across the state, although the abundance and composition of the associated species change in areas in the north due to a greater tropical influence. Overall, such habitats contain hundreds of species of plants and animals, many of which are yet to be named and described.

Marine parks have been established and zoned to include adequate and representative examples of the major habitat types within sanctuary zones. BROADSCALE biodiversity assessments incorporating the best available scientific information on marine habitats have provided a key inputs into zoning plans, as has available fisheries information. Additional fine-scale mapping of seabed habitats has occurred in recent years providing some of the most comprehensive information on estuarine and marine habitats in Australia. Local information on habitat and marine biodiversity from the community, including fishers and SCUBA divers has also been used.

The habitat classification system for each NSW marine parks is refined as new habitat and species assemblage data becomes available, to determine whether habitat adequately represents biodiversity. For example the habitat classification scheme for Solitary Islands Marine Park was refined as new information became available that confirmed different species assemblages were found in reefs at different depths and distances from coast.

Research projects such as Baited Remote Underwater Videos (BRUV's) and Under Water Visual Censuses (UVC's) are carried out in sanctuary, habitat protection and general use zones to measure changes in species assemblages over time and monitor the relative condition and response of these zones to management. It is typical of any research to measure and record data for a selection of species and locations, rather than every species and site of interest. While a large number of sanctuary zones would include research sample sites, it would neither be necessary or cost effective to study every single site to obtain scientifically useful information.

While it is not effective to conduct specific assessments on all sanctuary zones, for many harvested marine species, sustained fishing pressure over many decades has resulted in a significant reduction in their size structure, abundance and productivity. In addition to the capacity to significantly reduce the natural size structure and composition of fish populations, some fishing methods have had considerable cumulative impacts on non-commercial by-catch species, threatened and protected species and communities and marine habitats.

There are a number of species in NSW identified as having a high to moderate risk of population decline as a result of fishing pressure. Many of these species are sharks, which are particularly vulnerable because of their slow growth, low recruitment and long life span. Fishing has contributed to the significant declines in population numbers of species now listed as endangered, such as the grey nurse shark (*Carcharias taurus*).

More indirect changes to marine habitats has occurred due to the removal of target and by-catch species. For example, the development of barren reef areas due to the over-grazing of macroalgae by sea urchins can result, in part, from the reduction in the number of urchin predators due to fishing. Such barren areas are estimated to cover around 50% of shallow rocky reefs along the central and southern NSW coast. The large extent of these areas may indicate a considerable loss of overall marine productivity and has important implications for many species of algae, fishes and invertebrates.

The state of many sanctuary zones in a range of habitats are being monitored through time, but biological systems are variable and take time to respond following

protection. Documenting differences between sanctuary zones and other areas may take many years following the establishment of a zoning plan, and such differences are likely to be species-specific. A number of studies have indicated a period of at least 10 to 25 years is required for the full benefits of sanctuary zones to develop for some reef fishes, invertebrates and macroalgal assemblages, which is mainly driven by the longevity, recruitment patterns and prey interactions of those species. However, because of the complex food web within habitats such as rocky reefs, some species are likely to decrease due to the presence of more predators, and increases in numbers of some species may also be limited by the availability of food and competition.

Attachments

Tab A: Letter to the Advisory Council on Recreational Fishing clarifying arrangements in relation to fishing gear and transiting sanctuary zones

Tab B: *Operational Agreement for Compliance within NSW Marine Parks, and in State Waters outside those marine parks*

Tab C: *Marine Parks Supplementary Enforcement Guidelines*

Tab D: Extracts from the *Solitary Islands Marine Park Research Projects Summaries*



NSW National Parks
and Wildlife Service

Our reference: DOC09/32085

Mr Bruce Schumacher
Chairperson
Advisory Committee for Recreational Fishing
C/o Department of Industry and Investment (NSW)
PO Box 21
CRONULLA NSW 2230

Dear Mr Schumacher

Possession of fishing equipment in marine park sanctuary zones

I am writing in response to a matter raised at the May meeting of the Advisory Council on Recreational Fishing relating to possession of fishing equipment in marine park sanctuary zones.

The Marine Parks Authority includes the respective Directors General of the Department of Environment, Climate Change and Water (DECCW) and Department of Industry and Investment and is chaired by the Director General of the Department of Premier and Cabinet. While day to day management and marine park operations are administered by DECCW, I&I (NSW) continues to play an active role on the Marine Parks Authority providing advice on policy and operational matters relating to fishing, including enforcement and compliance.

The Marine Parks Authority has established a Marine Parks Compliance Group to coordinate marine park compliance activities and oversee implementation of a cross agency operational agreement. The group includes senior I&I NSW (Fisheries) and DECCW compliance managers and meets regularly to ensure that at state-wide level compliance policies and plans are coordinated, consistent or complementary, where possible. Consistency is necessary since Part 9 (Divisions 1-4) of the *Fisheries Management Act* relating to enforcement apply to marine park rangers and to marine park offences in the same way they apply to fisheries officers and fisheries offences.

An outcome of this co-operative approach is that the Marine Parks Authority compliance policy and state-wide compliance plan are both closely linked to national and I&I NSW fisheries compliance plans. Also, at the local level marine park officers and fisheries officers are working to develop fisheries district and marine park compliance plans, to improve efficiency and effectiveness of enforcement in and adjacent to marine parks.

Both DECCW and I&I NSW are in agreement that a consistent approach to the interpretation of defences relating to the possession of fishing equipment is essential. To this end a copy of guidance on defences relating to possession of equipment under clause 1.25 of the *Marine Parks (Zoning Plans) Regulation 1999* and section 25 of the *Fisheries Management Act 1994* are attached.

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Department of **Environment and Climate Change** NSW





**NSW National Parks
and Wildlife Service**

The Marine Parks Regulation prohibits the possession of fishing equipment in areas closed to fishing. The reason behind this law is simply to prevent fishing in these areas. Where an enforcement officer has evidence to support that a person was fishing, for example there were fresh fish on deck and rods were being baited, but did not actually observe fish being caught, the officer has the option to charge the person for possession of equipment.

Clearly, there are practical reasons why fishers will be in the possession of fishing equipment in sanctuary zones and other places in a marine park, but will not be using that equipment for fishing. In response to the issues raised by the Advisory Council the grounds for a defence for possession of fishing equipment have been clarified as attached. This explanatory information will be included on the Marine Parks Authority website and in future publications, where practicable to avoid confusion.

For the benefit of Advisory Council members I can confirm that during 2008/09, of the 22 enforcement actions relating to possession of illegal equipment in marine parks, only 3 persons received penalty notices. The remainder were issued written cautions. These facts suggest that fisheries and marine park officers have taken an even handed, broadly consistent and reasonable approach to enforcement of these provisions.

If there are any queries relating to this matter, please do not hesitate to contact me on 02 9585 6307 or Mr Adrian Toovey, Manager, Aquatic Protected Areas on 02 9585 6589.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Wright', with a long horizontal stroke extending to the right.

MICHAEL WRIGHT
Director Protected Areas Policy and Programs
Parks and Wildlife

Enclosure

cc: Paul O'Connor, Industry and Investment (NSW)





NSW National Parks
and Wildlife Service

Defences for the possession of equipment used to take animals or plants (Clause 19, Marine Parks Regulation 1999)

Transiting a sanctuary zone

Fishers may transit through any sanctuary zone (i.e. travelling from one place where the fishing gear can be legally used to another place the gear can be legally used) with:

- Fishing rod 'fully rigged', provided no part of the line is immersed in the water and no hook is baited;
- Spears provided they are stowed.
- Nets provided no part of a net is in the water

Anchoring, mooring or a ground in a sanctuary zone

When anchored, moored or a ground in a sanctuary zone all tackle must be removed from a rod, leaving only a bare line on the reel. This is deemed to be in an "unrigged state" for the purposes of the Marine Parks Regulation.

While there is no specific defence for possession of other fishing equipment in a sanctuary zone, as a matter of policy all other equipment must be stowed, including nets and spearguns. In this circumstance the term 'stowed' means: contained, or covered and secured or packed away. (For example, a speargun strapped to the hull or covered or in a hold would be considered stowed. A speargun lying on the deck of vessel would not be considered stowed)

Drifting in a sanctuary zone

Currently the Marine Parks Regulation does not provide a defence for possession of equipment whilst drifting through a sanctuary zone; however, as a matter of policy, drifting in a sanctuary will require rods to be in an unrigged state (only a bare line on the reel), and any form of fishing equipment to be stowed, the same as if the vessel was at anchor (it will be a defence if the vessel is drifting because of motor failure).

Commercial fishers

In regard to gear restrictions applying to commercial fishers the above defences equally apply. Marine Parks has also adopted the DPI Fisheries policy, which allows commercial fishers to have reasonable access to conduct legitimate fishing operations. Commercial fishers operating in marine parks will be given permission to transit through sanctuary and habitat protection zones. However, commercial fishers will be individually shown what constitutes stowed fishing gear for the purpose of transiting such areas.

Cleaning fish and fishing gear in a sanctuary zone

Cleaning fish and or fishing gear is not permitted in a sanctuary zone except at designated fish cleaning facility, which are generally shore based (e.g. Halifax point at Port Stephens, Minnie Waters at Solitary Islands).

Given the unique circumstance in Port Stephens whereby travellers from the Department of Environment and Climate Change NSW via sanctuary zones to their fishing grounds, the zoning plan allows for the cleaning of fishing nets





**NSW National Parks
and Wildlife Service**

in sanctuary zones of the marine park, but only while the net is being transported to or from any place where the net could lawfully be used for commercial fishing; and the cod-end of the net is open and otter boards are not submerged.

Relevant legislation - possession of equipment used to take animals or plants

Fisheries Management Act 1994

25 Possession of illegal fishing gear

(1) A person who is in possession of any fishing gear in, on or adjacent to any waters is guilty of an offence if:

- (a) the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under this Act; or
- (b) the taking of fish from those waters is, at that time, prohibited by or under this Act.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) A person who is on board a boat is taken to be in possession of any fishing gear found in the boat.

(3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was being transported, in accordance with the written authority of a fisheries officer, to waters where the person could lawfully take fish with that gear.

(4) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was in his or her possession for a lawful purpose.

Marine Parks (Zoning Plans) Regulation 1999 (as of end of 31 August 2009)

1.25 Possession of animals or plants or of equipment used to take animals or plants

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

Maximum penalty: 100 penalty units.

(2B) For the purposes of this clause, a person who is on board a boat is taken to be in possession of any equipment (including fishing gear) found in the boat and any plant or animal found in the boat.

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

(a) if the equipment concerned was fishing gear—that the fishing gear was being transported to or from any place where the person could lawfully use the equipment to take fish and was in the authorised state, or

(b) if the equipment concerned was not fishing gear—that the equipment was being transported to or from any place where the person could lawfully use the equipment to take animals or plants, and was in a state in which it could not have been used to take animals or plants, or

(b1) if the equipment concerned was a fishing line—that the fishing line was on board a vessel within a sanctuary zone, the vessel was anchored, moored or aground and the fishing line was in the unrigged state, or

(c) that the person could not reasonably have known that the equipment was on board a boat concerned, or





NSW National Parks
and Wildlife Service

(d) that the equipment was in the person's possession for a purpose that was lawful in the part of the marine park that the person was in.

(3A) A contravention of subclause (1)-(2A) is designated as a forfeiture offence.

Note. See section 36 of the Act and clause 29 of the Marine Parks Regulation 2009

(4) For the purposes of subclause (3) (a), the **authorised state** is:

(a) in the case of a fishing line—no part of the line was immersed in the waters of the marine park and no hook was baited, or

(b) in the case of a fishing net—no part of the net was immersed in the waters of the marine park, or

(c) in the case of fishing gear not referred to in paragraph (a) or (b)—the gear was stowed away.

(5) For the purposes of subclause (3) (b1), the **unrigged state**, in relation to a fishing line, means no part of the fishing line is attached to any hook, artificial lure, artificial fly, swivel or other piece of fishing tackle (other than any reel the fishing line was spooled on).

6.5 Fish cleaning - Port Stephens-Great Lakes Marine Park Zoning Plan

Despite clauses 1.11 and 1.25 of this Regulation, a person may clean fish or fishing gear while in a sanctuary zone of the marine park at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.

(2) Despite clauses 1.11 and 1.25 of this Regulation, a person may clean a fishing net in a sanctuary zone of the marine park while:

(a) the net is being transported to or from any place where the net could lawfully be used for commercial fishing, and

(b) the cod-end of the net is open, and

(c) none of the otter boards of the net are in the water.



**Operational Agreement for Compliance within NSW Marine
Parks, and in State Waters outside those marine parks**

Between

**Department of Primary Industries and the Department of
Environment and Climate Change**

1. PURPOSE

The purpose of this Agreement is to establish principles for the co-operative planning and delivery by the NSW Department of Primary Industries (DPI) and NSW Department of Environment and Climate Change (DECC) of compliance arrangements in NSW Marine Parks and waters outside Marine Parks.

2. OPERATIONAL AGREEMENT

- 2.1 This Agreement is an administrative arrangement only. It should not be construed as creating any legally enforceable rights or obligations between the Parties.
- 2.2 This Agreement applies to arrangements for the cooperative management of compliance both within NSW Marine Parks and in State territorial waters outside Marine Parks.
- 2.3 This Agreement also applies to arrangements for the cooperative management of compliance by DPI and DECC in Commonwealth waters.

3. INTERPRETATION AND DEFINITIONS

In this Operational Agreement:

Agreement means this "Operational Agreement" and any Schedule made pursuant to it.

Fisheries Officer means a person appointed as or taken to be a fisheries officer under Part 9 of the *Fisheries Management Act 1994* (the FM Act).

Litigation Officer means a person nominated by the Parties as a Litigation Officer under clause 4.3 of the Agreement and listed in Schedule 3 of the Agreement.

Local Manager means a person nominated by the Parties as a Local Manager under clause 4.2 of the Agreement and listed in Schedule 2 of the Agreement.

Marine Park - refers to the any of the areas declared to be a marine park under s. 6 of the *Marine Parks Act 1997* (the MP Act)..

Marine Parks Authority - (MPA) means the Authority constituted under s. 29 of the MP Act.

Marine Parks Officer - Refers to a position established by the MPA and administered by DECC that has the primary function and role of compliance in marine parks

Marine Park Ranger - Refers to (i) a position established by the Marine Parks Authority and administered by DECC that has the primary function and role of assessments and permits in marine parks, with secondary roles related to compliance; or (ii) to a person authorised under s.35A of the MP Act (marine park officers and marine park rangers and a range of

officers from other agencies, including many fisheries officers police officers are authorised as "Marine Park Rangers" under the MP Act)

Parties - means DPI and DECC.

Senior Manager - means a person nominated by the Parties as a Senior Manager under clause 4.1 of the Agreement and listed in Schedule 1 to the Agreement.

Zoning plan - means a zoning plan for a Marine Park, as set out or proposed to be inserted in Schedule 1 of the *Marine Parks Regulation 1999*.

4. LIAISON AND CONSULTATION

- 4.1 The Parties will nominate Senior Managers to ensure effective communication between the Parties regarding the implementation of this Agreement on a statewide basis. The nominated Senior Management contacts are listed in Schedule 1 to this Agreement.
- 4.2 The Parties will nominate Local Managers to facilitate effective communication between the Parties in relation to the implementation of this Agreement at each Marine Park. The nominated Local Managers are listed in Schedule 2 to this Agreement.
- 4.3 The Parties will nominate Litigation Contact Officers to ensure effective communication between the Parties regarding alleged offences under respective legislation and regulations. The nominated Litigation Contact Officers are listed in schedule 3 to this Agreement.
- 4.4 The Senior Managers will meet bi-annually to discuss matters pertaining to this Agreement, or any current or anticipated activities of DECC, DPI and MPA that may have relevance to this Agreement. The Local Managers will meet bi-annually or as required or as directed. The Litigation Officers will meet as required, but contact will in most cases be by telephone.
- 4.5 Parties will notify, as soon as practicable, each other of any changes to the Schedules to this Agreement.

5. OPERATIONS

- 5.1 Wherever possible, the Parties will seek to develop integrated and consistent compliance arrangements for marine parks and other waters.
- 5.2 The Parties recognise the advantages of developing cooperative compliance and enforcement strategies; sharing resources, skills and information; and co-ordinate a range of activities, including the following, in order to achieve the obligations set out in this Agreement.

Authorisation of appointments

- 5.3 The Parties agree that DPI will authorise all appointments of DECC employees as Fisheries Officers under the FM Act to undertake functions in relation to Fisheries compliance. Such appointments will require prior endorsement by the DECC Senior Managers.
- 5.4 The Parties agree that DECC will authorise all appointments of DPI Fisheries Officers as Marine Park Rangers under the MP Act to undertake functions in relation to Marine Park compliance. Such appointments will require prior endorsement by the DPI Senior Manager.

Policy and procedures;

- 5.5 The Parties agree that the DPI Fisheries Compliance Policy and Procedures Manual 2006 will apply (to the best extent possible) in relation to Fisheries compliance in Marine Parks.
- 5.6 DECC agrees to develop a Marine Parks Compliance Policy, in consultation with DPI, modelled on the above policy and integrating DECC compliance and prosecution policy requirements. In the interim, the DPI Fisheries Compliance Policy and Procedures 2006 will be adopted except for the following (which will not apply): Section 1 (DECC policy to apply); Section 2 (DECC policy to apply); sub-Section 3.5 (MPA safe operations of watercraft policy to apply); sub-Section 4.1 (baton and cuff equipment to apply to Marine Park Officers only); sub-Section 4.6 (taking of dogs on patrol prohibited); and sub-Section 4.14 (DECC operational planning to apply).

Prosecution process

- 5.7 The Parties agree that DPI will coordinate prosecutions under the FM Act; and that DECC will coordinate prosecutions under the MP Act.
- 5.8 The Parties agree that in relation to prosecution guidance, DPI Officers listed in Schedule 2 of this Agreement would provide advice to Marine Park Officers in relation to offences under the FM Act.
- 5.9 The Parties agree that DECC Officers listed in Schedule 2 would provide advice to Fisheries Officers in relation to offences under the MP Act.
- 5.10 The Parties agree that in relation to alleged offences that involve both the FM Act and the MP Act, that Litigation Officers will determine which agency will coordinate the prosecution.

Data and information access

- 5.11 The Parties agree that, with respect to their functions in relation to the MPA and Fisheries they will utilise the DPI Nautilus database, including aspects of Program Activity Reporting (PARS), for operations and offence and prosecution reporting.

- 5.12 The Parties agree that the MPA would be given the opportunity to modify, to the extent agreed to by the Senior Managers, the Nautilus database to cater for specific Marine Park requirements.
- 5.13 The Parties agree that DECC (on behalf of the MPA) would pay for MPA-related modifications, and that the Parties would jointly meet costs for the ongoing maintenance of the database. The details of cost sharing arrangements on a year by year basis will be negotiated by the Senior Managers.
- 5.14 The Parties agree that DECC Marine Park Officers, Marine Park Rangers, Regional Managers, Field Directors (including Officers listed in the Schedules to this Agreement) would be provided with appropriate access (excluding Administrative access) to the Nautilus database for MPA and Fisheries reporting purposes.
- 5.15 DPI agrees to provide, on request, intelligence information held by the Fisheries Investigations Group, to DECC Marine Park Officers. Intelligence information will be requested through the Senior Investigator, Statewide Operations and Investigation Group, DPI as listed in Schedule 2.
- 5.16 DECC will arrange and maintain access to RTA DRIVES 24 for DECC employees.

Planning

- 5.17 The Parties agree to jointly develop, through their Senior Managers, annual statewide MPA compliance plans that will guide compliance priorities and resource utilisation.
- 5.18 The Parties agree to integrate, as far as practicable, MPA and DPI compliance planning at DPI zone and marine park level; and agree to jointly develop, through their Local Managers, annual compliance plans for individual Marine Parks, incorporating risk assessment outcomes and priorities.
- 5.19 The Parties agree to conduct joint patrols when it is effective and efficient to do so, including with other relevant Authorities (for example, NSW Maritime and Water Police).

Incident Response and Communication

- 5.20 The Parties will develop a communication protocol for each Marine Park to ensure that the Senior Managers and Local Managers are aware of potential incidents and all other matters of importance in relation to Marine Parks.

6. STAFFING AND RESOURCE SHARING

- 6.1** The Parties agree to seek to maintain or improve existing resourcing for compliance in NSW Marine Parks, subject to agreed annual planning arrangements and budgetary decisions by government.
- 6.2** DECC agrees to offer DPI to participate in recruitment processes for DECC positions that have functions in relation to MPA (Marine Park Officers) compliance.
- 6.3** The Parties agree to consult with each other, through the Senior Managers, regarding changes to staff awards and penalty rates that have the potential to affect the operations conducted by Fisheries Officers or Marine Park Officers or both.
- 6.4** The Parties agree to aim to share resources for MPA and Fisheries compliance in Marine Parks on a *quid pro quo* basis. The Parties acknowledge that from time to time large expenditures incurred by either Party (e.g. the use by the MPA of DPI's large offshore compliance vessels) may have to be shared and apportioned accordingly.

7. REPORTING

- 7.1** The Parties agree to develop integrated arrangements (using Nautilus) for reporting compliance outcomes, in order to provide consistent and comprehensive reporting to stakeholders.
- 7.2** The Parties agree to provide regular (quarterly) reports, through the Local Managers, of compliance activities in Marine Parks to help measure the success or otherwise of compliance strategies.

8. LEGISLATIVE CHANGES AND REFORMS

- 8.1** The Parties agree to consult regarding any proposed changes to regulations and penalties under the FM Act and MP Act, and to work towards consistent penalties for like offences under the relevant legislation and regulations.

9. MARINE PARK ZONING PLANS

- 9.1** The Parties agree to consult each other and provide specific advice to the MPA with respect to the issues relating to compliance with new or revised zoning plans.

10. EXTENSION (EDUCATION) AND SIGNAGE

- 10.1** The Parties agree to cooperate and provide mutual support, as far as practicable, in the conduct of educational activities in relation to Marine Parks.
- 10.2** The Parties agree that each Party will have the opportunity to incorporate information into the other Party's educational material where appropriate; and will provide and distribute educational material produced by the other Party.
- 10.3** The Parties agree to share signage wherever appropriate. In respect of interpretation signage, the Parties agree to consult and to share interpretation opportunities.
- 10.4** The apportionment of costs associated with new signage between the Parties will be determined on a case by case basis. As a guiding principle, DECC agrees that standard Marine Park signage that includes some Fisheries compliance information will be paid by DECC. The apportionment of costs associated with interpretation signage between the Parties will be determined on a case by case basis through the Local Managers of both Parties.

11. TRAINING

- 11.1** The Parties agree to develop, through the Senior Managers, a training schedule / program for authorised Marine Park Rangers, and agree that in general and as far as practicable, Marine Park Officers will undergo the same type of training provided to Fisheries Officers. The Parties agree to pay their own training costs.
- 11.2** The Parties agree to organise and hold, through the Senior Managers, biennial training workshops for Marine Park Officers, Marine Park Rangers and relevant Fisheries Officers to ensure a shared understanding of legislation, and compliance processes, and to improve operational effectiveness.

12. MEDIA

- 12.1** The Parties agree that DECC will coordinate media liaison activities with respect to Marine Park matters; and DPI will coordinate media liaison activities with respect to Fisheries matters.
- 12.2** Parties agree to inform each other, through the Senior Managers and Local Managers, of Marine Park compliance related media announcements in advance of any release.

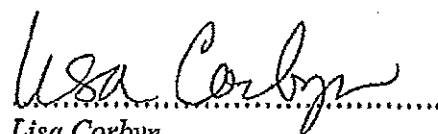
13 CONFLICT RESOLUTION

- 13.1 The Parties agree that any conflict or dispute arising in relation to this Agreement will be dealt with initially by the Senior Managers designated by the Parties for the purposes of this clause.
- 13.2 If the designated Senior Managers cannot resolve the dispute, the Party that claims that a dispute has arisen must notify the other Party giving details of the dispute. Following this notification, the dispute will be referred to the MPA for resolution.

14. TERMS OF AGREEMENT AND AMENDMENTS TO AGREEMENT

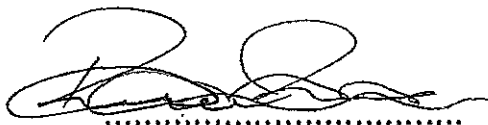
- 14.1 The Agreement will remain in place from the date of signature by the Parties until it is replaced with a revised Agreement or is terminated.
- 14.2 The Agreement will be formally reviewed by the Parties every five years or where deemed necessary. The Parties may revise the Agreement by further written agreement following such review.
- 14.3 The Agreement may be terminated by mutual agreement or by written notification by either Party.

This Operational Agreement is understood and agreed to by the following representatives.



Lisa Corbyn
Director General
Department of Environment
and Climate Change

19/3/08



Richard Sheldrake
Director-General
Department of Primary Industries

24 APR 2008

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Supplementary Enforcement Guidelines for Marine Parks

The Marine Parks Authority (MPA) exercises discretion in the context of their responsibilities for administration and the enforcement of the *Marine Parks Act 1994* and Regulations, and has adopted as part of its compliance policy the use of standardised 'enforcement factors' that help to ensure consistency in application and determination of enforcement action.

Recognising that enforcement requires an integrated and coordinated approach to users of marine parks and adjacent waters, both DECCW and Industry and Investment NSW (I&I NSW) have agreed to develop, wherever possible, integrated and consistent compliance arrangements for marine parks and waters outside marine parks.

The MPA Compliance Agreement between the MPA and I&I NSW has adopted the I&I NSW Fisheries Compliance Operations Manual for general enforcement of both Fisheries Management and Marine Parks offences. In addition, as part of this agreement all compliance actions and operational efforts are monitored and reported through the I&I NSW Nautilus Database system.

The guidelines below have been developed to supplement the I&I NSW Fisheries Compliance Operations Manual, to support and clarify enforcement actions and officer discretion within marine park boundaries. In all cases, authorised Marine Park Rangers (both DECCW and I&I NSW employees) are required to implement these guidelines consistent with the approved MPA Compliance Policy and Operational Agreement (*Note - where enforcement circumstances occur that are not covered by these supplementary guidelines, the enforcement action must be approved by the relevant Marine Park Manager*).

It is intended that in due course these guidelines will be incorporated into the I&I NSW Fisheries Compliance Operations Manual.

Important Note: Double Jeopardy

Clause 31 of the Marine Parks Regulation 2009 states: '*A person cannot be convicted of both an offence under this Regulation or the [Marine Parks \(Zoning Plans\) 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.*'

In this regard, where each of the elements of the offences under the marine parks and fisheries regulations are the same, then only the most serious offence should be acted on. If any of the elements are different (e.g. shucking

of abalone adjacent to waters and taking those abalone from a sanctuary zone) then action may be considered under both offences

1. Recreational fishing or collecting in a sanctuary zone (non charter boat)

- 1.1 A person found to have committed a marine park offence for recreational fishing or collecting in a sanctuary zone will normally be issued with a PIN, subject to 1.2 below.
- 1.2 Where the master of a boat (not being a charter boat) is to be issued with a PIN for the offence, any other passenger of that boat found to have committed a marine park offence for recreational fishing in a sanctuary zone would normally be issued with a PIN unless:
 - a) there is evidence that the master of the boat caused the passenger to believe that they were fishing lawfully and the passenger had no prior record,(prosecution, PIN or warning) related to fishing in a sanctuary zone; or,
 - b) there is evidence that the master of the boat caused the passenger to believe they were fishing lawfully, and the passenger (i) had not been previously informed of the zoning scheme by marine park staff (e.g. in a briefing prior to the commencement a fishing tournament), and (ii) had not attempted to avoid detection of their offence; or,
 - c) the reporting officer considers the boat had accidentally drifted into the sanctuary zone. The size of the sanctuary zone, how well it was marked, and the location of the boat within the sanctuary zone (e.g. whether or not it was in the middle of a large zone, and well away from the boundaries) would be factors here.

If (a), (b) or (c) above apply, then the passenger who was fishing in the sanctuary zone should be issued a written caution.

2. Maximum number of PINS

- 2.1 A person that has committed multiple marine park and or fisheries offences in a marine park will be issued with no more than two PINs (or three under approval of the relevant SFO or Marine Parks Manager). If additional offences by the same person occurred, then a decision needs to be made either to issue written cautions for the remaining offences or to recommend prosecution (refer to I&I NSW Fisheries Compliance Manual).
- 2.2 If a person has committed multiple marine park and fisheries offences the priority given to each offence should relate to the severity of the offence. In this regard, a sanctuary zone offence, and a threatened species offence, should normally be regarded as having the highest priority. Offences relating to size limits, bag limits or gear offences

would normally have the next level of priority. Recreational licence offences are normally lower again in priority.

3. Charter boat fishing in a sanctuary zone

- 3.1 If an operator of a commercial charter boat is alleged to be operating and aiding and abetting fishing to occur in a sanctuary zone, the master (and or permit holder) will be subject prosecution. Passengers aboard the charter boat will be subject to the guidelines given in section 1. above.

4. Commercial fishing seizure of boats, vehicles, fishing gear and catch.

Note, seizure and disposal of vehicles and boats relate only to *'commercial fishing activity' (as defined)* in *'forfeiture offences'* prescribed under the *Fisheries Management Act 1994*, as prescribed in clause 421 *Fisheries Management (General) Regulation 2002* and the *Marine Parks Act 1997* being offences prescribed in the *Marine Parks (Zoning Plans) Regulation 1999* as a *'forfeiture offence'*. Currently the only prescribed marine parks forfeiture offences are those under clauses:

- Section 20 G (1) or (2) – Closure offences;
- 1.11 - Sanctuary zone offences (being a *'serious offence'* under s 17A of the MP Act);
- 1.16 - Habitat protection zone offences;
- 1.19 - General use zone offences; and
- 1.22 - Special purpose zone offences..

The forfeiture of vehicles and boats in relation to any *'forfeiture offence'* can only be ordered by the court. The concurrence of the Director-General DECCW or delegate is required before any application to seek such a forfeiture order in relation to a marine parks offence can be made.

'major seizures of fishing gear': This includes seizure of lawful commercial fishing gear that is being used unlawfully (e.g. contrary to a zoning plan) or an 'over length' net that otherwise complies with the prescribed dimensions for such gear.

- 4.1 Seizure and disposal of vehicles, boats, and major seizures of fishing gear and catch by a marine park officer from a commercial fisher who has committed an offence under the Fisheries Management legislation are to be undertaken consistent with the I&I NSW Fisheries Compliance Manual (see Appendix A below) and under the direction of the Director, Fisheries Compliance or delegate.
- 4.2 Seizures of vehicles, boats, and major seizures of fishing gear and catch by a marine parks officer from a commercial fisher who has committed an offence under the Marine Parks Act are to be undertaken

consistent with the I&I NSW Fisheries Compliance Manual in consultation with the Director, Fisheries Compliance or delegate and the Regional Manager, PWG or delegate

5. Recreational fishing seizure of boats, vehicles, fishing gear and catch.

- 5.1 Seizure of vehicles, boats, and major seizures of fishing gear and catch by a marine park officer from a recreational fisher who has committed an offence under the Fisheries Management legislation are to be undertaken consistent with the I&I NSW Fisheries Compliance Manual and under the direction of the Director, Fisheries Compliance or delegate.
- 5.2 Seizure of vehicles and boats by an authorised marine parks ranger from a recreational fisher who has committed an offence under the Marine Parks legislation requires the direction of the Director, Coastal Branch (or delegate). In respect to seeking forfeiture of vehicles and boats, the concurrence of the Director-General, DECCW or delegate is required (note in the above circumstances seizure and disposal actions are required to be undertaken consistent with the I&I NSW Fisheries Compliance Manual and in consultation with the Director, Fisheries Compliance or delegate);
- 5.3 Seizure of gear and catch by an authorised marine park ranger from a recreational fisher who has committed an offence under the Marine Parks Act is to be made consistent with the I&I NSW Fisheries Compliance Manual, including the following circumstances:
 - Illegal gear;
 - unattended gear;
 - spears or spear guns when used in waters closed to use (e.g. sanctuary zone) or if they have been used to take protected or threatened species;
 - where the offender assaults, obstructs or refuses to state their full name and place of abode to a the officer.
 - Where the officer has reason to believe that the offender stated a false name or place of abode.
 - Surface supply (hookah) or self contained underwater breathing apparatus (scuba) equipment (including air compressors), wetsuits, flippers, diving masks etc when used for the taking of fish in a sanctuary zone or a protected or threatened species anywhere in the marine park.

6. Disposal of forfeited things.

The forfeiture of boats, vehicles, fish and fishing gear is subject to the relevant provisions of Part 9 *Fisheries Management Act* 1994.

When a thing that has been seized by a fisheries officer in relation to any offence in a marine park has been forfeited, the disposal of that thing is

subject to the I&I NSW Fisheries Compliance Manual and any instructions issued by the Director, Fisheries Compliance.

When a thing that has been seized by a marine parks officer in relation to a fisheries offence in a marine park has been forfeited, the disposal of that thing is subject to the I&I NSW Fisheries Compliance Manual and any instructions issued by the Director, Fisheries Compliance.

When a thing (other than boats or motor vehicles) that has been seized by a marine parks officer in relation to an marine parks offence has been forfeited, the disposal of that thing is subject to the I&I NSW Fisheries Compliance Manual and any instructions issued by the Regional Manager, PWG or delegate.

When a boat or motor vehicle that has been seized by a marine parks officer in relation to an marine parks offence has been forfeited, the disposal of that thing is subject to the I&I NSW Fisheries Compliance Manual and any instructions issued by the Director-General, DECCW.

Extract I&I NSW Fisheries Compliance Policy

Note: This policy and associated procedures, and some of the associated legislation, are under review – refer Director, Fisheries Compliance for further information.

Seizure Policy

This policy relates to the seizure of fishing equipment and other items from commercial or recreational fishers who have committed alleged offences against the *Fisheries Management Act 1994* (FMA) and associated legislation.

Illegal/unattended gear

Fisheries Officers are to seize all forms of illegal fishing gear from both commercial and recreational fishers. Legal fishing gear should only be seized if it is illegally set/deployed, is unattended and the owner cannot be identified in accordance with the provisions of the relevant legislation or in accordance with this policy.

Commercial gear

The seizure of legal gear from commercial fishers may prevent them from deriving an income prior to their guilt or innocence being determined by a court of law. Therefore, if the fishing gear is of legal dimensions it must only be seized when a serious offence has been committed, and in accordance with this policy.

Clause 20 of the *Fisheries Management (General) Regulation 2002* states, in part “For the purposes of this Part, a person who holds a commercial fishing licence that does not authorise the person to take fish for sale in a restricted fishery or a share management fishery is to be treated, in respect of that fishery, as a person who is not a commercial fisher.”

It is therefore unlawful for a commercial fisher who does not hold an endorsement in a particular fishery or zone, to use or possess a net or trap for the taking of fish from that fishery or zone. If an offence is detected, such gear is to be seized.

A commercial fisher, when not engaged in a commercial fishing activity, is permitted to take, by recreational fishing methods, the bag limit and possession limits specified for recreational fishers provided he/she has a current fishing fee receipt.

A commercial fisher may use a licensed fishing boat for the purpose of recreational fishing providing the boat contains no commercial fishing gear and any fish taken are not sold. The boat may display the LFB number. This is deemed to be the registration number of the boat for the purposes of NSW Maritime (Waterways) legislation.

Commercial fishing gear may be seized under the following circumstances:

- The gear is of legal construction (i.e. legal mesh size) but exceeds the legal dimensions (i.e. over length net) or the gear is lawful but exceeds the maximum quantity that may lawfully be used at any one time by that fisher.
- The gear is of legal dimensions but is used in contravention of Sections 14, 24 or 25 of the NSW Fisheries Management Act.
- The gear is of legal dimensions and the offender either assaults, obstructs or refuses to state his/her full name and place of abode to a Fisheries Officer.
- Meshing nets when used or in possession in or on ocean waters.
- Where a commercial fisher is found operating illegally in an aquatic reserve, a marine park, or another area protected from commercial fishing such as waters or a fishery defined in clause 19 or 20 of the Fisheries Management (General) Regulation.
- Where a commercial fisher is found in possession of prohibited sized fish where the total weight of prohibited sized fish exceeds 10% of the total weight of the fish in possession.
- Where a fisher is found in possession of any species listed as threatened within the meaning of part 7a of the Act.
- Where a fisher is found in possession of any species of fish listed as protected within the meaning of part 2 of the Act.

Recreational

Fishing gear that a recreational fisher may lawfully use or have in their possession must not be seized (i.e. set lines that are not tagged with the users name and address must not be seized). However, gear in excess of the

permitted quantity may be seized. Fisheries Officers are to ensure that recreational fishers indicate which gear is the excess gear prior to seizure.

Recreational fishing gear may be seized under the following circumstances:

- Spears or spear guns when used in waters closed to the use of the same or where they have been used to take protected or threatened species.
- Legal gear used by a commercial method (i.e. staked hand hauled prawn nets) or legal fishing rods when used in contravention of Sections 24 or 25 of the Act.
- Where the offender assaults, obstructs or refuses to state his/her full name and place of abode to a Fisheries Officer.
- Where the Fisheries Officer has reason to believe that the offender stated a false name and/or place of abode.
- Surface supply (hookah) or self contained underwater breathing apparatus (scuba) equipment (including air compressors), wetsuits, flippers, diving masks etc when used for the taking of commercial quantities of abalone or eastern rock lobsters (more than the prescribed bag limit) or where threatened or endangered species are taken, may be seized and held pending the outcome of any Departmental action. Officers must ensure that the gear is washed in fresh water, air tanks filled to prevent rusting and kept in the best possible condition.

Fish

Fish when seized must be disposed as per the policy on the return and disposal of seized gear (circular 4.6).

Seizure of vehicles and boats

Fisheries Officers are empowered to seize vehicles and boats if the offence is classed as a forfeiture offence under Clause 412 of the Fisheries Management (General) Regulation, in addition to equipment, catch and documents under Section 265 of the Fisheries Management Act.

When an officer is evaluating whether to seize a vehicle or boat the following factors must be considered:

- There must be a clear link between the item being seized and the offence detected;
- The welfare of the alleged offender and;

- The infrastructure must exist to support the seizure including transport of the seized item by a qualified officer and safe and secure storage of the item.

Boats and vehicles seized must be connected with specified commercial fishing activities. There is no power to seize vehicles or boats that have been used for recreational fishing unless they have been used in commercial fishing activities prescribed as a forfeiture offence under Clause 412 of the Fisheries Management (General) Regulation and in accordance with this policy.

When seizing equipment officers must take into account the welfare of the alleged offender. Officers are advised to treat all suspected offenders, as they would wish to be treated themselves.

In circumstances where a person's method of transport is seized, it could be argued that the person is now in the custody of the investigating official (see Section 464 of the *Crimes Act 1958*). Authorised officers are "investigating officials" within the meaning of that *Act* and in the circumstances of such seizures, the caution prescribed by the prosecutions policy must be administered.

There is no power to detain a person against their will, unless they are "under arrest". In circumstances where the alleged offender declines assistance, this must be recorded in notes taken at the time to form part of the evidence. If this involves leaving a person at the scene without transport, the matter must be immediately reported to Police.

The seizure of a person's method of transport may well involve Departmental costs associated with the provision of transport. In some circumstances this may involve the Department supplying a ticket for public transport or actual transport. It may also involve the Department supplying sustenance and accommodation. The use of a departmental telephone to call home and a friend or solicitor if required should be offered.

There may be occasions when the seizure of a person's method of transport will involve some logistical problems with the return of items and/or persons not associated with the offence, e.g. passengers in vehicles, crew on boats, dogs or other animals, firearms or bulky items not associated with the offence. In these circumstances public transport may not be an option.

Other logistic problems may be encountered when persons:

- Tow a trailer, but there is no link between the trailer and the offence – the offender has no means to "take the trailer home" when their vehicle is seized;
- Use campervans, (mobile dwellings), as the method of transport for illegal abalone, or;

- Use aeroplanes in the commission of an offence.

In some circumstances, there may be no option but to actually drive the alleged offender home. A departmental vehicle must be used. In no circumstances should a seized vehicle be used for anything other than to transporting it from the place of seizure to secure storage and/or to obtain a valuation.

The seizure of vehicles and boats is only to take place under circumstances where serious fisheries offences have been detected.

Such circumstances may include:

- The offender is arrested;
- Known recidivist offenders.
- For specific offences where directions have been given for vehicles or boats to be seized. Only the Manager Fisheries Compliance or Manager Special Operations may give these directions.
- For first offences where the offence involves:
 - a. Assault of a Fisheries Officer;
 - b. Serious abalone matters where the quantity of abalone substantially exceeds the bag limit and there is good reason to believe the offender is involved in the illegal abalone trade, e.g. previous offences;
 - c. Serious rock lobster matters where the quantity of rock lobsters substantially exceeds the bag limit and there is good reason to believe the offender is involved in the illegal rock lobster trade, e.g. previous offences;
 - d. Serious netting offences where a non-commercial fisher is using a net which is of a type described as a lawful commercial net under Part 3 Division 3 of the Fisheries Management (General) Regulation, or where a commercial fisher is using a net that is wholly illegal and where average mesh sizes are smaller than the legal size by more than twice the tolerance;
 - e. A boat is used for commercial fishing and is not licensed to fish in NSW waters (such as a Commonwealth licensed trawler fishing in state waters);
 - f. Other commercial type operations in waters or fisheries as set out in Clauses 19 and 20 of the Fisheries Management (General) Regulation or use of excess quantities of gear such as yabby traps in western rivers or streams, or eel traps in freshwater;

- g. Use of electrical fishing devices or explosives.

When a suspected offender is being interviewed and forfeiture of a vehicle or boat is envisaged, the reporting officer should question the offender about ownership and the answers recorded as part of the Fisheries Officer's record of interview. The reporting officer should inform the Supervising Fisheries Officer and the Manager Legal Services, and prepare a written report within 48 hours of the offence.

Proceedings **must** be initiated in court within **28 days** of the seizure or the vehicle/boat must be returned to the alleged offender.

If it is estimated the value of the boat or vehicle is greater than \$10,000 proceedings must be initiated in the Supreme Court not the Local Court, which has no power to issue forfeiture orders in such matters.

Officers should return any items in the boat or vehicle that do not constitute evidence, and keep an accurate record of all fixtures and items in the boat or vehicle, (eg, tools, ropes, nets, and charts).

If ownership of the boat is attributed to another person, then that person should be questioned without delay. Depending upon the answers given, consideration should be given to charging that person for aiding and abetting under Section 351b of the *Crimes Act 1900*.

If a vehicle/boat is seized for any of the above reasons, the seizing officer is to immediately inform their supervisor, who should in turn ensure that the Manager Fisheries Compliance or Manager Special Operations is made aware of circumstances surrounding the seizure. Appropriate proceedings must then be commenced within the prescribed 28 day period and a decision made as to whether the seized vehicle/boat will be returned to the offender.

Fisheries Officers must ensure that any boat or motor vehicle seized is maintained in reasonable condition.

In circumstances where a seizure has been made and the boat/vehicle is not to be returned immediately, the following actions must be undertaken by the seizing officer;

- As soon as possible obtain a written valuation of the boat/vehicle from a reputable company in the relevant business.
- Arrange for a suitably qualified person to provide a detailed written report on the condition of the boat/vehicle noting any damage or defects together with an appraisal of the condition of the seized item, which may be used to counter any claim that the owner may later raise.
- Where appropriate, fuel tank, odometer or hour meter readings should be recorded.

- Detailed photographs should be taken that clearly establish the condition of the boat/vehicle and associated equipment at the time of seizure.
- The boat/vehicle must be secured in a safe location and under no circumstances be accessible to members of the public.
- Generate a logbook that can if required, be tendered as evidence in a court, fully detailing the type of maintenance activities carried out and the name of the person who carried out the work.
- Arrange for the boat/vehicle to be washed and if necessary cleaned as necessary.
- Arrange for a suitably qualified person [not the owner] to start and run the main engine, auxiliary machinery and electronic equipment to ensure operational condition is maintained to the same standard as when seized.
- For moored boats, in accordance with the owner's maintenance schedule, arrange for a suitably qualified person [not the owner] to slip the boat and service under water equipment [stern tube, anodes, propeller, etc.] clean and anti-foul hull as required.
- Ensure that the owner has an opportunity to inspect the seized boat/vehicle and maintenance logbook each month and if required, make written comments about the maintenance. Inspection must be under the direct supervision of the seizing officer and recorded in the logbook to maintain continuity of evidence.
- Ensure accurate records of all costs associated with the maintenance are kept.

Return and Disposal of Seized Gear

Subject to conditions set out in seizure policy no. 4:2 (see Policy & Administration Manual), the Minister has approved a policy on returning or otherwise of seized gear or other things which had been used in the commission of an alleged offence against the *Fisheries Management Act, 1994*.

When nets, fishing gear or other things are seized and retained as exhibits, Fisheries Officers should ensure that the standard of care in respect of the custody of any such thing seized, is "such care as a person of ordinary discretion can reasonably be expected to exercise in respect of his/her own property".

For the purpose of this part, the provisions of Section 271 of the Fisheries Management Act apply.

Commercial Fishing Gear

- (a) Written applications for the return of anything seized must be made by the owner to the Manager Fisheries Compliance and or Manager Special Operations. Lawful fishing gear or anything which is lawful but being used unlawfully will be returned to the owner providing that;
 - 1. The owner has not had a previous fishing conviction in the proceeding 10 years; and
 - 2. The commercial fisher holds an endorsement into the fishery that the gear may be lawfully used.
- (b) Lawful commercial fishing gear used unlawfully will not be returned to the owner if;
 - 1. The offender assaulted, obstructed or refused to state his/her name or address, or
 - 2. The fisher is known as a habitual offender who has been previously warned in writing that any future seized fishing gear will not be returned, or
 - 3. The Director Compliance Operations considers the matter as a major breach of fisheries legislation and the return of the seized items would not assist fisheries management.

Recreational Fishing Gear

Any fishing gear that a recreational fisher may lawfully use or have in his possession will be returned providing that written applications for the return of anything seized is made by the owner to the Manager Fisheries Compliance and or Manager Special Operations: and.

- (a) The owner or the person from whom the thing was seized has not had a previous fishing conviction in the proceeding 10 years; or
- (b) Spears or spear guns were used or in possession in waters closed to the use of the same, or
- (c) Legal fishing gear used in contravention of a section 8 notification or in possession in contravention of Section 25 of the Fisheries Management Act (NOTE: this does not apply to the seizure of a fishing rod when used in closed trout waters), or
- (d) The fishing gear will not be returned if the offender either assaulted, obstructed or refused to state his/her name and address to a Fisheries Officer

- (e) The fisher is known as a habitual offender who have been previously warned in writing that any future seized fishing gear will not be returned, or
- (f) The matter is not considered by the Director Compliance Operations as a serious breach of Fisheries legislation and the return of the seized gear would not assist fisheries management.

Notice of Seizure/Property Seizure/Seized Gear Register

- (a) Where a seizure is made for an alleged offence against the Fisheries Management Act, a notice of seizure must be issued by the officer making the seizure to the owner of the thing seized either, at the time of the seizure if the owner is present or, to the owners last known business or residential address.

If an infringement notice is issued then a notice of seizure must be issued separately.

- (b) Details to be set out in the Notice of Seizure must include;

1. Name and address of owner
2. Full description of all items seized (including brand name, serial number etc).
3. In the case of fish, the species, number or weight and length measurements.

- (a) The original of seizure notice is to be given to the owner or a person from whose possession it was seized, if the owner is not known the fisheries office must establish the owner the duplicate copy is to be attached to prosecution report.

Storage of Seized Fishing Gear and Other Things

- (a) Seized things such as fish, fishing gear and records which have been left at a place because removal at that time is restricted by physical constraints should, where possible, be placed in a room or compartment and the officer should mark, fasten or seal the door or opening that provides access to the room or compartment.
- (b) Seized things that have been taken into possession by a Fisheries Officer are to be transferred to a suitable place and stored in a secure room. Access to the room is to be restricted to the District Fisheries Officer in charge or a person appointed by a Supervising Fisheries Officer. Where items are removed from safe storage for any reason a movement record should be maintained within the Seized Gear Register or Property Seizure Register. Continuity and the chain of evidence are essential in maintaining the integrity of prosecution briefs.
- (c) A register is to be maintained of all items seized including fish. The register is to have the Seizure Notice or the Infringement Notice number

recorded, date of seizure, file or reference number, name and address from whom seized, full description including any serial numbers, weights, quantity and estimated value of items seized.

- (d) The register must also have details of method of disposing of the seized thing.
- (e) Nets are to be cleaned of organic matter and other gear stored so as to ensure that it does not deteriorate. Dive gear should be hosed and dried before permanent storage. Air tanks (scuba) to be filled to prevent rusting. All fish and other items should be tagged with the seized gear register reference.

Seizure Summary Sheets

Fisheries Officers are to complete a Seizure Summary Sheet (Annexure 2) and forward it together with a Prosecution Summary Sheet (Annexure 1) and a Brief of Evidence to the Supervising Fisheries Officer in charge of the Zone within 21 days of the offence having been detected.

Note: If a seizure of a motor vehicle or boat takes place a prosecution brief must be prepared and forwarded within 48 hours to enable information to be laid within the 28 days statute.

Penalty Notice or Caution

- (a) A copy of the Seizure Summary Sheet should be retained at the Fisheries office. In the case of Penalty or Caution Notice having been issued, the Seizure Summary Sheet must be forwarded to the SEINS Reviewing Supervising Fisheries Officer with the penalty notice number clearly shown or a copy of the Caution letter or Penalty Notice.
- (b) The Manager Fisheries Compliance and or Manager Special Operations or Supervising Fisheries Officers may authorise the return or destruction of a seized things when he/she is satisfied that
 - 1. The penalty has been paid and no further legal action is pending; or
 - 2. The owner has not disputed the seizure under the provisions of section 272 of the Act; or
 - 3. It is lawful for the owner to use or be in possession of the thing.

Unattended Seized Items

- (a) If a thing is seized as unattended or the owner is unknown, a Seizure Notice is to be completed and the original forwarded to the relevant Supervising Fisheries Officer. The article must also be recorded in the seized gear register.
- (b) The seizing officer is to complete a seizure summary sheet placing on the local file and provide a copy to the relevant Supervising Fisheries Officer .
- (c) After a period of 28 days, if the owner is not located and the seizure is not disputed under Section 272 of the Fisheries Management Act, the Manager Fisheries Compliance and or Manager Special Operations or Supervising Fisheries Officer may authorise the destruction or otherwise disposal of the item on the Seizure Summary Sheet. The Seizure Summary Sheet must be retained for audit purposes.

Return and Disposal of Seized Gear

Return

Where there has been no contravention of the Fisheries Management Act or permission has been given for the items to be returned, an appropriately delegated officer will approve the items to be delivered up to:

- (a) The person from whom it was seized; or
- (b) Such person as appears to the delegated officer to be entitled to it.

When returning items, the signature of the person to whom it is being returned is to be obtained on the Seizure Summary Sheet with an appropriate entry being made in the local register of seized items.

For the purpose of this part, the delegated officer will be the relevant Supervising Fisheries Officer or the Manager Fisheries Compliance and or Manager Special Operations.

Destruction

If items are to be destroyed, Supervising Fisheries Officer or Senior Investigator must give written approval on the Seizure Summary Sheet. The local register and the Seizure Summary Sheet are to be noted and both officers are to sign the forms. The Seizure Summary Sheet must be retained on the local file for audit purposes and the Seizure Register noted.

Note: A Supervising Fisheries Officer should be present when the destruction of the items is effected. If this is not possible a second Fisheries Officer or a reputable person should be present.

In all cases the witnesses name, address and signature must be clearly identified on the Seizure Summary Sheet.

Selling or Otherwise

If items such as fish, are sold or otherwise disposed of, then the signature and name of the person receiving the items is to be obtained and placed on the local file with an appropriate entry being made on the Seizure Summary Sheet and/or Register. If fish are returned live to the water, wherever possible a witness should be present and the witnesses name and address recorded.

If the fish are of a prohibited size or are a perishable thing that can not be lawfully sold, the Fisheries Officer may donate them to a hospital or charitable institution or dispose of them in any other way. Officers should ensure that a receipt is obtained and the seizure summary sheet is completed.

Items such as dive gear (wetsuits, flippers, hookah, air tanks, spear guns etc) should be either destroyed or sold by tender according to NSW Department of Primary Industries tendering procedures. Under no circumstances should such equipment be donated to schools, charities or other organisations, nor should it be retained for any use by departmental staff.

Records

- (a) Property Seizure books are to be accountable and be issued by the Regional Manager who will record numbers, area and name of officer to whom issued.
- (b) Cancelled notices are to be kept in books.
- (c) Finished books are to be returned to the Regional Manager.
- (d) Lost books are to be immediately reported to Regional Manager together with an explanation re the loss.

Seizure of Boats and Motor Vehicles

It is not proposed to seize boats except under extreme circumstances.

Such circumstances are:

- (a) That the offender is arrested;
- (b) Known habitual offenders, who have been previously warned in writing their boats may be seized, or
- (c) For specific offences where directions have been given for boats to be seized. These directions may only be given by the Manager Fisheries Compliance and or Manager Special Operations.

When a suspected offender is being interviewed and forfeiture of a boat is envisaged, the reporting officer should question the offender about ownership and the answers recorded as part of the Fisheries Officer's report.

If ownership of the boat is attributed to another person, then that person should be questioned without delay. Depending upon the answers given, consideration should be given to charging that person for aiding and abetting under Section 100 of the Justices Act.

If a boat is seized for any of the before mentioned reasons, the seizing officer is to immediately inform his Supervising Fisheries Officer who should in turn ensure that the Manager Fisheries Compliance and or Manager Special Operations is made aware of circumstances surrounding the seizure so appropriate proceedings may be commenced within the prescribed period and a decision made as to whether the seized boat will be returned to the offender.

As soon as possible after the seizure the officer concerned should obtain a written valuation of the boat / vehicle from a reputable dealer.

Any boat / vehicle seized must be washed and secured in a safe location under lock and key and under no circumstances are to be left accessible to members of the public.

Supervising Fisheries Officers should identify suitable safe compounds for the storage of seized boats/vehicles.

Transportation of Seized Items

Fisheries Officers have, in the past, made arrangements with the owners of the gear for its method of return by mutual agreement. In most cases, owners of gear are given the opportunity of selecting the mode of transport, and usually acknowledge responsibility for the gear whilst in transit.

Although in the past there have been no firm guidelines on the packaging of such gear, it should be assumed that Fisheries Officers would take the necessary steps to prevent any damage to the returned gear.

NSW Department of Primary Industries could attract criticism if damage occurred, and if 'reasonable' care was not taken to protect such gear whilst in transit to the owner.

All fishing rods and reels or any other gear, should be broken down if possible and packaged in a manner to minimise damage. Reels should be taken off rods and handles reversed or removed. Attention should be made to rod tips and runners. Items such as opera house yabby traps could be forwarded in a jute or hessian bag.

When discussing the transportation of the gear with the owner, Fisheries Officers should point out that all reasonable care will be taken, but no responsibility accepted.

RESEARCH PROJECT SUMMARIES

Solitary Islands Marine Park

This document provides a collation on non-technical summaries for research and monitoring projects conducted within Solitary Islands Marine Park with support from the NSW Marine Parks Authority. Further additional funding was provided for some projects by a number of State and Commonwealth agencies and universities.



The impacts of four-wheel vehicles on beach macrofauna

Exposed sandy beaches are important and widespread coastal habitat which are focal areas for recreational activities. Indeed, recreational activities are the most common anthropogenic disturbance on sandy beaches and these pressures have been increasing in recent years. The effects of 4WD vehicles on sandy beach macrofauna were investigated by conducting a community level manipulative experiment on an exposed sandy beach in NSW.

This study comprised pre- and post-impact sampling of four replicated treatments. These included a control and three impact treatments that were each subjected to a different intensity of 4WD vehicle traffic (ten, twenty and forty vehicle passes per day over a five day period). Five biotic variables were monitored, including the total number of individuals, species richness and species abundance of the three most common species: the cirolanid isopod *Pseudolana cocinna*; the ghost crab *Ocypode cordimana*; and the blood worm *Lobochesis longiseta*. Sediment granulometry and beach gradient were also measures each sample.

Of the fifteen analyses that were conducted on the biotic variables, fourteen revealed no impact. An impact was detected at the medium treatment level for species richness, though this may have been a chance event. It was concluded that 4WD traffic at the treatment levels used had no significant impact on the macrofauna and that variation due to natural disturbance was more important in generating the patterns observed over the four month duration of the study.

Reference

Hastie, B. (2000). The impacts of 4WD vehicles on beach macrofauna. Unpublished Honours Thesis, University of New England.

The impact of four-wheel drive vehicles on, and the natural variation of sandy beach meiofauna

Sandy beach meiofaunal communities were examined at two locations within the Solitary Islands Marine Park (SIMP), on the mid-north coast of NSW, Australia. The impact of fourwheel drive (4WD) vehicles on the meiofaunal community, and the natural (spatial and temporal) variation within the meiofaunal community was examined.

The 4WD experiment incorporated a Beyond BACI (Before/After, Control/Impact) design with replicated control and impact treatments (low, medium and high). Each impact treatment corresponded to a specific number of vehicles passes per day, 10, 20 and 40 respectively. 4WD impacting occurred each day for one week, with samples collected directly before and after impact in all treatments. A detectable effect was only apparent for copepods; however, this may be due to the high level of natural spatial and temporal variation masking any 4WD effects.

The temporal experiment incorporated a two-factor design (Time and Plot) and involved sampling eight times over a period of 128 days. Temporal variation was detected for all univariate, multivariate and sediment analyses. Meiofaunal community structure changed almost entirely after a period of 6 days, with very few species being consistently responsible for these differences. At the community level, only a slight correlation was found with the sediment characteristics. In contrast, a strong relationship was observed between some univariate variables and sediment characteristics.

The spatial experiment incorporated a four-factor (Beach, Location, Site and Plot) fully nested design across a number of spatial scales (kilometres, 100's metres, 10's metres and 10's centimetres). Spatial variation within the meiofaunal community was detected across all scales examined. Sediment characteristics (particularly grain size) were the major factor in structuring the meiofaunal community over most spatial scales examined, with strong correlations at the community and taxon level.

Overall, it appears that meiofaunal communities vary over a wide range of temporal and spatial scales. It is also apparent that detecting physical disturbances to meiofaunal communities relies on prior knowledge of patterns of natural spatial and temporal variation.

Reference

- Bell, T. (2005). The impact of four-wheel drive vehicles on, and the natural variation of, sandy beach meiofauna. Unpublished M.Sc. Thesis, University of New England.