

29 June 2017

Marine Estate Management Regulation Submission
NSW Department of Primary Industries, Fisheries
Locked Bag 1
Nelson Bay NSW 2315

By website submission

Dear Marine Estate Management Authority,

Draft Marine Estate Management Regulation 2017

EDO NSW welcomes the opportunity to comment on the *Draft Marine Estate Management Regulation 2017 (Regulation)*. We are a community legal centre specialising in public interest environmental law. Our previous law reform submissions relevant to marine management are available on our website.¹

We note the current proposal involves re-making the *Marine Estate Management Regulation 2009 (2009 Regulation)* with four substantive amendments and a number of minor amendments to improve the legal accuracy of the wording of the regulation.²

We generally support the Regulation but object to proposed Amendment 2, namely:

Delete Clause 10(2) as Clauses 8 and 9 of the Regulation already ensure that the Ministers must consider the objects of zones when assessing applications for activities. In addition the Clause could conflict with the Marine Estate Management (Management Rules) Regulation 1999 that allows consent for research, environmental protection, public health, traditional use or public safety purposes. For example catching, tagging and releasing fish in a sanctuary zone for research on the effectiveness of sanctuary zones would require approval under the Marine Estate (Management Rules) Regulation 1999. This is because harming, or attempting to harm an animal in a sanctuary zone is prohibited without the Ministers' consent. However, in theory this activity may not be permissible under clause 10(2) of the Marine Estate Management Regulation.

Clause 10 (2) of the 2009 Regulation states:

¹ See: http://www.edonsw.org.au/coastal_marine_fisheries_management_policy

² Details of the proposed changes are provided at: <http://www.marine.nsw.gov.au/key-initiatives/marine-legislation>

(2) Except in emergencies, the relevant Ministers must not give consent to the carrying out of any activity in a zone of a marine park that, in the opinion of the relevant Ministers, is inconsistent with the objects of the zone.

This clause provides a strict protection for the marine environment by ensuring that the objects of the zone are the primary consideration in any decision to grant a permit for activities within a marine park. We do not accept that the clause could conflict with the *Marine Estate Management (Management Rules) Regulation 1999 (1999 Regulation)*, as that regulation clearly states that activities such as recreational, educational and other activities and scientific research are permitted in zones, where they are consistent with the primary object of the zone. The strict protection provided by clause 10(2) in the 2009 Regulation is in contrast to the provisions in clauses 8 and 9 of the Regulation which merely require the Minister to “have regard” to various assessment criteria.

We recommend that the Regulation be made maintaining clause 10(2) of the 2009 Regulation.

If there are any matters that you would like to discuss please do not hesitate to contact us on 02 9262 6989 or by e-mail to [rachel.walmsley\[at\]edonsw.org.au](mailto:rachel.walmsley@edonsw.org.au).

Yours sincerely,
EDO NSW

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley
Policy and Law Reform Director