

30 November 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 Strategy 2018-2028**

EDO NSW welcomes the opportunity to comment on the *Draft Marine Estate Management Strategy 2018-2028 (draft Strategy)* and the supporting information exhibited by the Marine Estate Management Authority (**MEMA**).

EDO NSW is a community legal centre specialising in public interest environmental law. We support strong and coordinated management of marine bioregions to ensure ecologically sustainable use of marine resources and protection of our unique marine species and ecosystems. Our previous submissions relevant to marine management, including our submission to the *Hawkesbury Shelf Marine Bioregion Assessment Suggested Management Initiatives Discussion Paper (Hawkesbury DP)*, are available on our website.<sup>1</sup>

This submission comments on the Supporting Information, and on the draft Strategy in relation to seven issues:

- *Establishing a comprehensive, adequate and representative marine reserve network*
- *Management Objectives*
- *Aboriginal management of Sea Country*
- *Measuring outcomes*
- *New versus existing actions*
- *Integration with the planning system*
- *Resources for implementation*

### **Supporting Information**

In relation to the supporting information, we make comment regard the *NSW Marine Estate Threat and Risk Assessment Final Report* and the *Guidelines for Assessing Management Options for the NSW Marine Estate*.

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<sup>1</sup> See: [http://www.edonsw.org.au/coastal\\_marine\\_fisheries\\_management\\_policy](http://www.edonsw.org.au/coastal_marine_fisheries_management_policy)

## ***NSW Marine Estate Threat and Risk Assessment Final Report***

We note that the draft Strategy is based on the final *NSW Marine Estate Threat and Risk Assessment Final Report (TARA)*. The final TARA includes a number of changes from the exhibited draft. Unfortunately it appears that the changes made are not based on the best available science, but instead reflect a reprioritisation required to justify the proposed management actions initially discussed in the Hawkesbury DP and now included in the draft Strategy. Consequently, the importance of a number of key management initiatives that would enhance protection of marine biodiversity is understated. We maintain that the highest priority management initiative for Hawkesbury Shelf Marine Bioregion should be the implementation of a large-scale, multi-use marine park that provides comprehensive, adequate and representative protection of the marine estate. Such a marine park would address a large number of high and moderate risks and threats, and is the suggested management initiative that is most consistent with the objects of the *Marine Estate Management Act 2014*.

The changes made in the final TARA appear to reflect a small number of submissions, which not only moves the TARA away from being an objective science based tool, it flies in the face of the majority of community comment, summarised as:

*“The Community Survey revealed that people value the marine estate’s natural assets more than any other ‘benefit’ - the estate’s natural beauty and the clean waters supporting a variety of unique and abundant Australian marine life was identified as the most important asset”.*

### ***Guidelines for Assessing Management Options for the NSW Marine Estate***

In undertaking the management initiatives selection process, the draft Strategy also relies on the *Guidelines for Assessing Management Options for the NSW Marine Estate (Guidelines)*. EDO NSW does not support the application of the Guidelines as drafted. The Guidelines attempt to apply traditional economic theory, which it acknowledges does not adequately account for externalities, in a situation where the majority of impacts are externalities, and where there has been significant market failure in previous economic-based management actions (as seen by the current need for Government financial intervention in commercial fisheries management).<sup>2</sup> Despite these acknowledged limitations, the Strategy relies on the assumptions in the Guidelines for decision making. This again results in significantly under-valuing of marine biodiversity and intrinsic natural benefits, both of which have been identified as a high priority for protection through the scientific assessment process and the community consultation process.

### **Draft Strategy**

Rather than comment on each of the 72 proposed management initiatives individually, we primarily provide comments that have broad applicability across all management initiatives.

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<sup>2</sup> See for example the Commercial Fisheries Business Adjustment Program: <https://www.dpi.nsw.gov.au/fishing/commercial/reform>

## **1. Establishing a comprehensive, adequate and representative marine reserve network**

We welcome the statement that “Maintaining the existing system of marine parks in NSW and improving the holistic management of the protected area network is a priority of the NSW Government.” However, as was the case in the Hawkesbury DP, while the draft Strategy identifies that marine parks are needed in the Hawkesbury and Two Fold marine bioregions (p 15), there is no clear statement of intention, or pathway to, the implementation of these marine parks. Consequently, the draft Strategy fails to articulate how MEMA will address the object of the *Marine Estate Management Act 2014* to “provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves.” Objectives such as 2.5, 3.6, 5.8, and 6.4 must be strengthened to specifically commit to the establishment of a comprehensive, adequate and representative (**CAR**) system of marine parks.

## **2. Management Objectives**

A number of the proposed objectives fail to recognise that social and economic activities in the marine environment are entirely dependent on maintaining a healthy environment. As such, the objectives should be reworded with the explicit aim of maintaining environmental health and **where consistent with this** allowing extractive activity. For example:

- *Management Objective 5* must be adapted to adequately recognise fish species as wildlife, not just target species, and implement appropriate management measures. This should include preventing new or enhanced threats acting on these species, not just mitigating existing threats.
- *Management Objective 6* - “To ensure fishing and aquaculture provides for sustainable use while providing for the health, heritage and social benefits of seafood consumption to the community” should be changed to require “ecologically sustainable use”.
- *Management Objective 7* - “To balance protection of coastal and marine habitat and species with access and safe and sustainable boating” should require protection of coastal and marine habitat and species and, where consistent with this, allow access.
- *Management Objective 8* - “To improve governance arrangements in the marine estate and to respond to knowledge gaps, resource-use conflict and loss of public access” needs to improve governance arrangements for the purpose of ensuring sustainability, and any legislative changes should not reduce environmental standards.

More specifically, *Management Objective 6* should also require ecosystem based management strategies to be developed for all target species, to both protect those species and ensure that other species that are not currently of management concern don't become so. Fish stocking should only be allowed where it is environmentally appropriate, having considered potential genetics and trophic level impacts of any fish releases. Importantly, fish stocking should not replace appropriate management of wild species. This objective also needs a focus on integrating management of

shared fish stocks and maintaining a cross jurisdiction focus on reducing illegal activity and preventing shark finning.

### **3. Aboriginal management of Sea Country**

We strongly support the objectives to involve Aboriginal communities in Sea Country management (*Management Objectives 4.1-4.8*). We note that new laws for Aboriginal culture and heritage are currently being proposed by the NSW Government including, for example, increased levels of self-determination and broader definitions of culture and heritage. The implementation of the Aboriginal marine management objectives must be cognisant of the emerging reforms and evolve in close consultation with Aboriginal communities.

### **4. Measuring outcomes**

The draft Strategy fails to include SMART (Specific, Measurable, Attainable, Relevant, Timely) indicators for any of the proposed management initiatives. While we acknowledge the proposal to develop a *Strategy Implementation Plan*, the absence of SMART targets in the draft Strategy means it is unclear how future management actions will be identified and prioritised and what would constitute successful implementation of the final Strategy. Any changes required as a result of the five-year health check are proposed to be included in a revised Implementation Plan rather than in the overarching Strategy, meaning the Strategy itself is likely to become obsolete over the 10 year timeframe.

This risk is enhanced by the fact that the majority of the proposed management initiatives are, or should be, short-term actions, rather than proposals for transformative improvements in our management of the marine environment over the coming decade. For example, proposal 7.3 is to run pilot programs. The objective for a 10 year strategy should be to set ambitious best practice goals for 2028, with activities such as pilot programs to be used as tools to achieve these goals. This provides just one example of where the draft Strategy is not sufficiently forward looking or ambitious.

### **5. New versus existing actions**

We maintain the concern expressed in our comments on the draft Hawkesbury DP that the suggested management initiatives are a combination of limited new actions and, in many cases, existing actions. While it is beneficial to coordinate actions designed to benefit the marine estate, for many of the actions listed, coordination is already undertaken by other organisations such as Local Land Services or regional Council groups (e.g. Objective 1.2, 1.3 and 2.4). It should be made clear:

- what new actions are being proposed;
- what actions are simply listed to provide a more holistic picture of marine estate management;
- what new role MEMA will play in coordination of new and existing actions; and
- how a contribution from MEMA will enhance existing activity.

Proposals to improve reporting and data sharing should be linked to existing government access and data sharing programs such as the SEED environmental data portal.

## **6. Integration with the planning system**

Stronger integration into the planning system will be vital for successful implementation of any final Strategy. We acknowledge objective 5.6 “Understand and reduce impacts of habitat modification on marine wildlife through mapping of key habitat areas, embedding rehabilitation and conservations actions in planning processes, and collaborating with land owners and the community to protect species and habitats”. However, implementing a planning framework that protects key habitats and ensures we have climate ready laws to allow ecological communities such as wetlands and saltmarsh to adapt to climate change, should be fundamental considerations.<sup>3</sup> The use of existing regulatory tools and associated management mechanisms should also be enhanced, for example placing greater focus on recreational fishing or boat licence renewal processes as tools for education.

## **7. Resources for implementation**

Finally, we note that there are no financial commitments to implement management objectives and in fact the draft Strategy includes statements about the need to seek funding from elsewhere. The final Strategy should be supported by a clear commitment from the NSW Government to fund improved management of the marine environment.

For further information please contact ph: 02 9262 6989 or email: rachel.walmsley[at]edonsw.org.au.

Yours sincerely,  
**EDO NSW**



**Rachel Walmsley**  
Policy & Law Reform Director

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<sup>3</sup> EDO NSW has made extensive comments on the current coastal management reform progress – for example on the importance of sensitive coastal environments, for example in *Submission responding to the NSW Coastal Management Reforms*, February 2016; and *Draft Coastal Management State Environmental Planning Policy – EDO NSW submission*, January 2017 – available at: [http://www.edonsw.org.au/coastal\\_marine\\_fisheries\\_management\\_policy](http://www.edonsw.org.au/coastal_marine_fisheries_management_policy).