

Passed by both Houses



New South Wales

Marine Parks Amendment Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Marine Parks Amendment Bill 2008

Act No , 2008

An Act to amend the *Marine Parks Act 1997* to make further provision with respect to the management and operation of marine parks; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Marine Parks Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Marine Parks Act 1997 No 64

The *Marine Parks Act 1997* is amended as set out in Schedule 1.

4 Amendment of Subordinate Legislation Act 1989 No 146

The *Subordinate Legislation Act 1989* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Marine Parks Act 1997

(Section 3)

[1] Section 4 Definitions

Omit the definition of *marine park closure* from section 4 (1).

Insert in alphabetical order:

aircraft means any airborne craft, including a fixed wing craft, helicopter, gyrocopter, glider, hang glider, hot air balloon and airship.

marine park closure—see section 20A.

zoning plan for a marine park means the zoning plan for the marine park established by a regulation referred to in section 17B.

[2] Section 16 Regulations relating to zoning plans for marine parks

Omit the section.

[3] Section 17 Other regulations for marine parks

Insert “and the possession of animals, plants or materials that have been taken from marine parks” after “marine parks” in section 17 (c).

[4] Section 17 (j)

Insert after section 17 (i):

- (j) regulating or prohibiting the use of aircraft over or within marine parks.

[5] Section 17A Offences against management regulations

Insert “or Division 1A” after “this Division” in section 17A.

[6] Part 3, Division 1A

Insert after section 17A:

Division 1A Zoning plans

17B Regulations relating to zoning plans for marine parks

- (1) Without affecting the generality of Division 1, the regulations may make provision for or with respect to the use and management of a marine park by means of a zoning plan set out in the regulations.

- (2) A zoning plan may include provisions for or with respect to the following:
 - (a) the classification of areas within a marine park (for example as sanctuary zones, habitat protection zones and general use zones),
 - (b) the uses that are permitted or prohibited within such areas,
 - (c) the management of such areas.
- (3) The relevant Ministers must not recommend the making of regulations that establish, replace or amend a zoning plan unless the relevant Ministers are satisfied that the provisions of this Division have been complied with in the making of the regulations.
- (4) Failure to comply with any provision of this Division does not affect the validity of a regulation establishing, replacing or amending a zoning plan.

17C Making zoning plans for marine parks

- (1) The Authority, in consultation with the advisory committee for a marine park, is to cause a draft zoning plan to be prepared within 12 months after the declaration of the marine park.
- (2) The Authority is to submit the draft zoning plan to the relevant Ministers together with any comments from the advisory committee for the marine park.
- (3) Within 3 months after receiving the draft zoning plan, the relevant Ministers are to:
 - (a) cause public notice to be given of the draft zoning plan, or
 - (b) refer the draft zoning plan back to the Authority for further consideration.
- (4) The notice is to:
 - (a) specify the address of each place at which copies of the draft zoning plan are available, and
 - (b) invite submissions to be made on the draft zoning plan before the date specified in the notice (being a date not less than 3 months after the date of the notice), and
 - (c) specify the address to which submissions are to be forwarded.

- (5) The relevant Ministers are to consider:
 - (a) any submissions made before the date referred to in subsection (4) (b), or such later date as the relevant Ministers allow, and
 - (b) any comments from the advisory committee for the marine park.
- (6) Within 3 months after the date referred to in subsection (4) (b) the relevant Ministers are to:
 - (a) submit a regulation to the Governor setting out the zoning plan for the marine park with such modifications, if any, as the relevant Ministers think fit, or
 - (b) refer the draft zoning plan back to the Authority for further consideration.

17D Review of zoning plans for marine parks

- (1) In this section, the *review date* for a zoning plan for a marine park is:
 - (a) for the first review of the zoning plan—the date that is 5 years after the commencement of the first zoning plan made for the marine park, or
 - (b) for the second or any subsequent review of the zoning plan—the date that is 10 years after the previous review date for the zoning plan.
- (2) The Authority is to conduct a review of the zoning plan for each marine park as soon as practicable after the review date for the zoning plan to determine whether the plan remains appropriate for securing the objects of this Act.
- (3) In conducting a review, the Authority is to prepare a review report that includes:
 - (a) the assessment of existing arrangements for:
 - (i) the conservation of natural and cultural heritage, and
 - (ii) sustainable resource use, and
 - (iii) the management of zones, and
 - (b) any relevant findings and recommendations arising from the review, and
 - (c) such other information arising from the review as the Authority considers appropriate.

- (4) The review report is to be referred to the advisory committee for the marine park concerned for comment.
- (5) A copy of the review report, including any comments from the advisory committee for the marine park, is to be given to the relevant Ministers no later than 12 months after the relevant review date for the plan.
- (6) Within 3 months after receiving a review report, the relevant Ministers are to direct the Authority to:
 - (a) cause a draft zoning plan to be prepared to replace the zoning plan for the marine park, or
 - (b) cause a draft zoning plan to be prepared to amend the zoning plan for the marine park, or
 - (c) take such other action in relation to the marine park as specified by the relevant Ministers.

17E Amending zoning plans for marine parks

- (1) The relevant Ministers may, at any time, recommend the making of a regulation to amend the zoning plan for a marine park.
- (2) Without limiting subsection (1), the relevant Ministers may recommend the making of a regulation to amend the zoning plan for a marine park as a consequence of any of the following:
 - (a) the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Threatened Species Conservation Act 1995*,
 - (b) the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Fisheries Management Act 1994*,
 - (c) the making of any instrument under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth in relation to species, ecological communities, places or activities that is relevant to the marine park,
 - (d) the making of a proclamation under this Act varying the area of the marine park.
- (3) At the direction of the relevant Ministers, the Authority is, in consultation with the advisory committee for the marine park, to cause a draft zoning plan to be prepared to amend a zoning plan.
- (4) Section 17C (2)–(6) apply to the making of an amendment to the zoning plan for a marine park in the same way as they apply to

the making of a zoning plan under that section unless the relevant Ministers are of the opinion that:

- (a) the amendment is to be made as a consequence of any event referred to in subsection (2) (a)–(c), or
- (b) the proposed amendment corrects a technical error or inconsistency.

17F Relationship with other plans of management

If an area within a marine park is subject to a plan of management under the *National Parks and Wildlife Act 1974* or the *Crown Lands Act 1989*, the zoning plan for the marine park prevails over the plan of management to the extent of any inconsistency.

[7] Section 18 Mining in marine parks prohibited

Insert after section 18 (3):

- (4) This section does not apply to or in respect of sand extraction within a marine park for conservation purposes or for the purpose of preventing the risk of serious injury to a person or harm to the environment that is carried out in accordance with a consent granted under this section and any other authorisation required under any other Act.
- (5) The relevant Ministers may grant consent (with or without conditions) to the carrying out of sand extraction within a marine park but only if satisfied that the sand extraction is for a purpose referred to in subsection (4).
- (6) In deciding whether to grant consent, the relevant Ministers must have regard to the assessment criteria (if any) prescribed by the regulations.

[8] Section 19 Development within marine park—application of EPA Act

Omit section 19 (1) (a) (ii). Insert instead:

- (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and

[9] Section 19 (1) (a) (iv)

Insert after section 19 (1) (a) (iii):

- (iv) any relevant marine park closures, and

- [10] Section 19 (2) (a) (ii)**
Omit the subparagraph. Insert instead:
 (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
- [11] Section 19 (2) (a) (iv)**
Insert after 19 (2) (a) (iii):
 (iv) any relevant marine park closures, and
- [12] Section 19 (3) (a) (ii)**
Omit the subparagraph. Insert instead:
 (ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
- [13] Section 19 (3) (a) (iv)**
Insert after section 19 (3) (a) (iii):
 (iv) any relevant marine park closures, and
- [14] Section 19 (4) (b)**
Omit the paragraph. Insert instead:
 (b) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and
- [15] Section 19 (4) (d)**
Insert at the end of section 19 (4) (c):
 , and
 (d) any relevant marine park closures.
- [16] Section 20A Prohibition of activities in marine parks**
Insert after section 20A (3) (a):
 (a1) without limiting paragraph (a), may prohibit the carrying out of an activity unless the consent of the Authority or a permit issued by the Authority has been obtained, and

[17] Section 20H Removal of wrecked vessels and other property from marine parks

Omit section 20H (1). Insert instead:

(1) In this section:

person responsible, in respect of removable property, means:

- (a) the person who caused the property to be in the marine park, or
- (b) if the person referred to in paragraph (a) is unknown or is unable to remove the property—the person who has control of the property, or
- (c) if the persons referred to in paragraphs (a) and (b) are unknown or are unable to remove the property—the owner of the property.

removable property includes:

- (a) any sunken or wrecked vessel, or
- (b) any abandoned property, or
- (c) anything unlawfully erected or placed.

[18] Section 20H (2)

Omit “the owner of or person responsible for any unused property”.

Insert instead “the person responsible for any removable property”.

[19] Section 20H (2)

Omit “owner or”.

[20] Section 20H (2)

Omit “500” and “100”. Insert instead “1000” and “200”, respectively.

[21] Section 20H (3)

Omit “unused” wherever occurring. Insert instead “removable”.

[22] Section 20H (4A)

Insert after section 20H (4):

- (4A) If, in the opinion of the Authority, significant environmental damage has been, or is likely to be, caused by removable property in a marine park, the Authority may take such steps as the Authority considers appropriate to do any or all of the following:
 - (a) repair or remedy any damage to the environment caused by the property,

- (b) mitigate any damage to the environment caused by the property,
- (c) prevent any further damage to the environment by the property.

[23] Section 20H (5)

Omit “owner of or person responsible for the unused property”.
Insert instead “person responsible for the removable property”.

[24] Section 20H (6)

Omit “unused property” wherever occurring.
Insert instead “removable property”.

[25] Section 21 Relationship with Coastal Protection Act 1979

Omit the section.

[26] Section 23 Preparation of operational plan for marine park

Omit “after the declaration of the marine park”.
Insert instead “after the establishment of a zoning plan for the marine park”.

[27] Sections 24–26A

Omit sections 24–26C. Insert instead:

24 Objective of operational plan for marine park

The objective of an operational plan for a marine park is to identify and define a scheme of the strategies, actions or activities that are proposed to be undertaken by the Authority (including arrangements with other agencies) to operate a marine park, consistent with the zoning plan for the marine park and the objects of this Act.

25 Adoption of operational plan

- (1) The Authority is to prepare a draft operational plan for a marine park having regard to the zoning plan for the park and the objects of this Act.
- (2) The Authority is to refer the draft operational plan to the advisory committee for the marine park concerned for consideration and advice.
- (3) The Authority is to consider any comments it receives from the advisory committee for the marine park within the period

specified by the Authority when referring the plan (being a period of not less than 28 days).

- (4) The Authority is to adopt an operational plan for a marine park as soon as practicable and, before doing so, may make such changes (if any) to the draft plan as it thinks appropriate to take account of the comments received from the advisory committee.

26 Alteration or replacement of operational plan for marine park

- (1) The Authority may, at any time, amend or replace the operational plan for a marine park.
- (2) Without limiting subsection (1), the Authority may amend or replace the operational plan for the marine park as a consequence of a review conducted under section 26A.
- (3) Section 25 applies to the amendment or replacement of an operational plan under this section in the same way as it applies to the initial operational plan for a marine park.

26A Review of operational plan for marine park

- (1) The Authority is to review the operational plan for a marine park as soon as practicable after the zoning plan for the marine park is amended or replaced.
- (2) Despite subsection (1), the Authority is not required to review the operational plan for a marine park under that subsection after the amendment of the zoning plan for the marine park if the Authority is of the opinion that the amendment is minor in nature.

[28] Section 28 Relationship with other plans of management

Omit the section.

[29] Section 29 Establishment of Marine Parks Authority

Omit section 29 (2). Insert instead:

- (2) The Authority consists of:
- (a) the Director-General of the Department of Premier and Cabinet who is to be the Chairperson of the Authority, and
- (b) the Director-General of the Department of Primary Industries, and
- (c) the Director-General of the Department of Environment and Climate Change.

[30] Section 31 Staff of the Authority

Omit “National Parks and Wildlife Service, NSW Fisheries”.

Insert instead “Department of Environment and Climate Change, Department of Primary Industries”.

[31] Section 32 Establishment of Marine Parks Advisory Council

Omit “Director-General of NSW Fisheries, the Director-General of National Parks and Wildlife” from section 32 (2).

Insert instead “Director-General of the Department of Primary Industries, the Director-General of the Department of Environment and Climate Change”.

[32] Section 33 Functions of Marine Parks Advisory Council

Insert “from a statewide perspective” after “matters” in section 33 (2).

[33] Section 33 (2) (a)

Omit “and variations of the areas of marine parks”.

[34] Section 33 (2) (b)

Omit the paragraph.

[35] Sections 35 and 35AA

Omit section 35. Insert instead:

35 Establishment of marine parks advisory committees

- (1) The relevant Ministers must establish an advisory committee for each marine park.
- (2) An advisory committee is to include such members as are appointed by the relevant Ministers who, in the opinion of the relevant Ministers, represent the interests of the following:
 - (a) marine conservation,
 - (b) marine science,
 - (c) Aboriginal people,
 - (d) the tourism industry,
 - (e) commercial fishers,
 - (f) recreational fishers,
 - (g) scuba divers,
 - (h) local councils.

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- (3) The advisory committee for a marine park may include more than one representative in respect of each interest referred to in subsection (2) and other representatives as determined by the relevant Ministers.
 - (4) The relevant Ministers must publicly call for nominations for members of an advisory committee to represent the interests referred to in subsection (2), other than for members to represent the interests of local councils.
 - (5) The relevant Ministers are to nominate a member of the advisory committee to be the chairperson of the advisory committee.
 - (6) The provisions of Schedule 2 apply to an advisory committee in the same way as they apply to the Advisory Council with any necessary modifications, including modifications (if any) prescribed by the regulations.
 - (7) In this section, *modification* includes addition, exception, omission or substitution.

35AA Functions of marine parks advisory committees

- (1) An advisory committee has such functions as are conferred on it by or under this or any other Act.
- (2) In particular, advisory committees are to advise on any of the following matters relating to the marine park in relation to which the advisory committee was established:
 - (a) provisions of an operational plan or zoning plan for the marine park,
 - (b) the appropriate classification of areas within the marine park for the purposes of a proposed zoning plan for the marine park,
 - (c) the conservation of marine biological diversity,
 - (d) the ecologically sustainable use of the marine park and whether any particular use of the marine park is not ecologically sustainable,
 - (e) the use and enjoyment of the marine park by members of the public,
 - (f) the application of marine park closures.

[36] Section 35A Marine park rangers

Omit section 35A (2). Insert instead:

- (2) The relevant Ministers may appoint an officer or employee of a Government Department or a public or local authority as a marine park ranger for the purposes of this Act.

[37] Section 36 Application of Fisheries Management Act 1994

Omit “National Parks and Wildlife” from section 36 (2) (d).

Insert instead “the Department of Environment and Climate Change”.

[38] Section 37 Application of National Parks and Wildlife Act 1974

Omit “Director of NSW Fisheries” from section 37 (2) (a).

Insert instead “Director-General of the Department of Primary Industries”.

[39] Section 42 Marine Parks Fund

Omit section 42 (2) (a). Insert instead:

- (a) the costs and expenses incurred by the relevant Ministers, the Director-General of the Department of Primary Industries, the Director-General of the Department of Environment and Climate Change and the Authority in the carrying out of functions under this Act, and

[40] Section 44

Omit the section. Insert instead:

44 Nominees

- (1) The Director-General of the Department of Premier and Cabinet may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority.
- (2) The Director-General of the Department of Environment and Climate Change may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority or the Advisory Council.
- (3) The Director-General of the Department of Primary Industries may nominate an officer of that Department to act in the place of the Director-General as a member of the Authority or the Advisory Council.
- (4) A nominee appointed under this section by the Director-General of the Department of Premier and Cabinet has, while acting in the place of the Director-General as a member of the Authority, all of

the functions of a member of the Authority (including the functions of the Chairperson) and is taken to be such a member.

- (5) A nominee appointed under this section by the Director-General of the Department of Environment and Climate Change has, while acting in the place of the Director-General as a member of the Authority or the Advisory Council, all of the functions of a member of the Authority or the Advisory Council (as the case may be) and is taken to be such a member. In the case of a nominee to act as a member of the Advisory Council, those functions include any functions of the Director-General in relation to chairing meetings of the Advisory Council.
- (6) A nominee appointed under this section by the Director-General of the Department of Primary Industries has, while acting in the place of the Director-General as a member of the Authority or the Advisory Council, all of the functions of a member of the Authority or the Advisory Council (as the case may be) and is taken to be such a member. In the case of a nominee to act as a member of the Advisory Council, those functions include any functions of the Director-General in relation to chairing meetings of the Advisory Council.

[41] Section 48 Regulations

Omit “100” from section 48 (2). Insert instead “200”.

[42] Schedule 2 Provisions relating to members and procedure of Advisory Council

Omit the definition of *appointed member* from clause 1. Insert instead:

appointed member means a member appointed by the relevant Ministers.

[43] Schedule 2, clause 4

Insert after clause 4 (2):

- (3) The Authority may request that the relevant Ministers exercise their power under subclause (2) to remove a person from office if, in the opinion of the Authority, the person becomes unable to adequately represent the interests that the member was appointed to represent, or is unable to adequately provide the expertise that the member was appointed to provide.
- (4) The relevant Ministers may, but need not, remove a person from office in response to a request from the Authority under subclause (3).

[44] Schedule 2, clause 6

Omit “the Director of NSW Fisheries and the Director-General of National Parks and Wildlife”.

Insert instead “the Director-General of the Department of Primary Industries and the Director-General of the Department of Environment and Climate Change”.

[45] Schedule 2, clauses 12 and 13

Insert after clause 11:

12 Alternate members

- (1) The relevant Ministers may, from time to time, appoint a person to be the alternate of an appointed member, and the relevant Ministers may revoke any such appointment.
- (2) In the absence of an appointed member, the member’s alternate may, if available, act in the place of the member.
- (3) While acting in the place of an appointed member, the alternate of the member:
 - (a) has all of the functions of the member and is taken to be the member, and
 - (b) is entitled to be paid such allowances as the relevant Ministers may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence of the appointed member.
- (5) For the purposes of this clause, the functions of an appointed member do not include the member’s functions as the Chairperson, unless the relevant Ministers otherwise direct.

13 Transaction of business outside meetings or by telephone

- (1) The Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all of the members of the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the Advisory Council.
- (2) The Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means,

but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

[46] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Marine Parks Amendment Act 2008

[47] Schedule 3, clause 2

Omit “Director of NSW Fisheries” from clause 2 (7) (b).

Insert instead “Director-General of the Department of Primary Industries”.

[48] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Marine Parks Amendment Act 2008

6 Definitions

In this Part:

amending Act means the *Marine Parks Amendment Act 2008*.

existing zoning plan means a zoning plan prescribed by regulations in force immediately before the repeal of section 16 by the amending Act.

7 Existing zoning plans for marine parks

- (1) On the repeal of section 16 by the amending Act, an existing zoning plan is taken to have been made for the purposes of

Division 1A of Part 3 of this Act (as inserted by the amending Act).

- (2) Despite section 17D (1) (a), the review date for the purposes of that section for the first review of the Solitary Islands Marine Park Zoning Plan and the Jervis Bay Marine Park Zoning Plan is the date of commencement of section 17D.

8 Existing marine park advisory committee

- (1) An advisory committee in existence under section 35 immediately before its substitution by the amending Act is taken to have been validly established under section 35 as so substituted.
- (2) A person who, immediately before the substitution of section 35 by the amending Act, was a member of an advisory committee for a marine park continues to be a member of the advisory committee for the marine park for the remainder of the term of office.

9 Existing operational plans for marine parks

An operational plan that was in force immediately before the substitution of section 25 by the amending Act is taken to have been adopted under that section as so substituted.

10 Existing marine park rangers

A person who, immediately before the amendment of section 35A by the amending Act, was a marine park ranger is taken to have been validly appointed as a marine park ranger under section 35A as so amended.

11 Existing nominees

A nomination in force under section 44 immediately before the substitution of that section by the amending Act is taken to be a nomination under that section as so substituted.

Schedule 2 Amendment of Subordinate Legislation Act 1989

(Section 4)

[1] Section 10 Staged repeal of statutory rules

Insert after section 10 (4):

- (5) This section does not apply in respect of a regulation comprising only provisions relating to zoning plans for marine parks under the *Marine Parks Act 1997*.

[2] Schedule 3 Matters not requiring regulatory impact statements

Insert at the end of the Schedule:

- 9** A zoning plan for a marine park under the *Marine Parks Act 1997*.