



Australian Government

Director of National Parks

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

South-east Commonwealth Marine Reserves Network Management Plan 2013-2023

Background

The South-east Commonwealth Marine Reserves Network (the South-east Network) consists of 14 Commonwealth marine reserves that lie off the coast of New South Wales, Victoria, Tasmania and South Australia. The South-east Network came into effect on 28 June 2007 by Proclamation under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Management of the South-east Network is the function of the Director of National Parks (the Director) under the EPBC Act.

The South-east Network includes the following Commonwealth marine reserves all of which came into effect on 28 June 2007 with the exception of the Macquarie Island Commonwealth Marine Reserve which came into effect on 27 October 1999:

- Apollo Commonwealth Marine Reserve
- Beagle Commonwealth Marine Reserve
- Boags Commonwealth Marine Reserve
- East Gippsland Commonwealth Marine Reserve
- Flinders Commonwealth Marine Reserve
- Franklin Commonwealth Marine Reserve
- Freycinet Commonwealth Marine Reserve
- Huon Commonwealth Marine Reserve
- Macquarie Island Commonwealth Marine Reserve
- Murray Commonwealth Marine Reserve
- Nelson Commonwealth Marine Reserve
- South Tasman Rise Commonwealth Marine Reserve
- Tasman Fracture Commonwealth Marine Reserve
- Zeehan Commonwealth Marine Reserve

The reserves of the South-east Network were established to protect and maintain marine biodiversity, contribute to the National Representative System of Marine Protected Areas (NRSMPA) and to help

ensure the long-term ecological viability of Australia's marine ecosystems. The conservation values that the reserves help to protect include:

- ecosystems, habitats, communities, species and sea-floor features found within the provincial bioregions of the South-east Marine Region
- ecological features with high biodiversity value, species richness and endemism
- cultural and heritage values
- habitats important for protected species
- a number of species listed as endangered or vulnerable under Commonwealth legislation or international agreements.

Overview of the Legislative instrument

The Director of National Parks prepares management plans for Commonwealth reserves in accordance with Section 368 of the EPBC Act. The EPBC Act and associated Regulations prohibit certain activities from occurring in the South-east Network and other Commonwealth reserves. The Management Plan for the South-east Network is an enabling document. It allows management activities to occur that would otherwise be restricted under EPBC legislation, and enables certain management, recreational and commercial activities to occur.

The Management Plan also sets out strategies and actions that the Director will implement during the life of the plan to work toward the dual objective of biodiversity conservation and ecologically sustainable use, in the areas of the South-east Network where this is allowed.

This is the first Management Plan for the South-east Network.

Structure and Content of the Management Plan

The Management Plan consists of five parts and three appendices:

- Part 1 sets out the objectives of the Management Plan and provides an overview of the plan's structure.
- Part 2 contains a description of the regional features and conservation values protected by the South-east Network and broadly outlines the pressures that may influence those values during the life of the plan.
- Part 3 details the IUCN categories and management zones used in the South-east Network and assigns IUCN categories to all of the management zones.
- Part 4 describes the seven management strategies and associated actions and the outcomes sought. The seven management strategies include:
 - Improve knowledge and understanding of conservation values of the South-east Network and pressures on those values
 - Minimise impacts of allowable activities through effective assessment of proposals, decision-making and management of reserve-specific issues
 - Protect the conservation values of the South-east Network through management of environmental incidents
 - Facilitate compliance with the Management Plan through education and enforcement
 - Promote community understanding of, and stakeholder participation in, the management of the South-east Network
 - Support involvement of Indigenous peoples in management of Commonwealth Marine Reserves

- Evaluate and report on the effectiveness of the Management Plan through monitoring and review.
- Part 5 sets out the legal prescriptions that authorise and manage use of the South-east Network. This part details the activities that are allowed, restricted or prohibited in the reserves and zones and includes the following categories of use:
 - General use and access
 - Commercial shipping
 - Commercial fishing
 - Commercial tourism (including charter fishing) and commercial media
 - Recreational fishing (including clients of charter fishing tours and organised fishing competitions)
 - Mining operations (including exploration)
 - Structures and works
 - Research and monitoring activities
 - Defence, border protection, law enforcement and emergency response
 - New activities and authorisations.
- Appendix A provides maps of the South-east Network and each of the reserves and gives a description of each reserve and lists the features and conservation values.
- Appendix B details the legal context for the management plan under the EPBC Act.
- Appendix C lists the Australian IUCN reserve management principles relevant for the reserves of the South-east Network.

Consultation

On 18 January 2008, in accordance with Section 368 of the EPBC Act, a Notice of Intent was published in the *Australian Government Gazette*, *The Australian* and relevant State-circulating newspapers and placed on the Department of Sustainability, Environment, Water, Population and Communities' website, inviting comments on the proposal to prepare a draft Management Plan for the South-east Network.

Invitations to comment were also sent to Chairpersons of any land council for any Indigenous people's land in the reserves and holders of petroleum titles overlapping with the Commonwealth marine reserves.

This comment period closed on 29 February 2008 with a total of 18 submissions received. The comments received were considered in preparing the draft Management Plan.

The draft Management Plan for the South-east was released for public comment on 11 July 2012. As required under the EPBC Act, the Director published a notice inviting comments on the draft South-east Commonwealth Marine Reserves Network Management Plan in the *Australian Government Gazette*, *The Australian* and relevant State-circulating newspapers and on the Department's website. Additionally, an email was sent to all stakeholders that had registered an interest through the Marine Bioregional Planning process. Copies of the draft Management Plan were made available through the Department's Community Information Unit and on the Department's website. Comments on the draft Management Plan closed on 27 August 2012. A total of 25 submissions were received.

The Director considered all comments received in revising the Management Plan.

Regulation Impact Statement

In accordance with requirements for new regulatory instruments, the Director sought the advice from the Office of Best Practice Regulation (OBPR) as to whether a Regulatory Impact Statement (RIS) was required for the Management Plan. The OBPR advised that a RIS was not required (OBPR reference number: 14203).

Period of Operation

The Management Plan will come into effect on 1 July 2013. It will cease to have effect on 30 June 2023, unless revoked earlier and replaced by a new Management Plan.

Legislative Instrument

The Management Plan is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

South-east Commonwealth Marine Reserves Network Management Plan 2013 - 2023

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The South-east Commonwealth Marine Reserves Network Management Plan (the Management Plan) sets out how the values of the South-east Commonwealth Marine Reserves Network (the South-east Network) will be protected and conserved. Commonwealth Marine Reserves are proclaimed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the Director of National Parks (the Director) must prepare a Management Plan for a reserve as soon as practicable after it is declared.

The EPBC Act and Regulations prohibit and restrict a number of activities within reserves, including extraction of living resources and mining, unless they are permitted under a Management Plan. The Management Plan is therefore an enabling instrument that provides measures to allow activities that would otherwise be prohibited under the EPBC Act.

The measures outlined in the Management Plan primarily specify which activities may occur in particular areas within the reserves and the mechanisms for authorising them, based on the potential impacts that those activities might have on the relevant conservation values. The Management Plan also specifies the strategies and actions that the Director will implement to achieve the objectives of the Management Plan. The arrangements outlined in the Management Plan were developed in accordance with the EPBC Act requirements for developing management plans, including statutory consultation.

The purpose of the Management Plan is to provide primarily for the protection and conservation of biodiversity and other natural and cultural values of the South-east Network, and within that context to provide for ecologically sustainable use.

Human Rights Implications

The Management Plan engages with the following human rights:

Right to self-determination

Although there is no universally accepted agreement on what is required to meet this right, it is generally accepted that it includes allowing people to pursue their economic, cultural and social development. The Management Plan promotes this right through consultation and consideration of stakeholders views on their economic, cultural and social aspirations for marine reserves, and in particular contains strategies and actions that support involvement of marine users and Indigenous people in managing the South-east Network.

Right to freedom of movement

In order to achieve the objectives of the Management Plan it is necessary to restrict some access and uses that may impact on the natural and cultural values in some reserves. This may involve the right to freedom of movement; however this is not an absolute right and may be subject to permissible limitations where there is a legitimate objective, in this case the conservation and protection of natural and cultural values into the future, and the response is reasonable, necessary and proportionate. Limitations on access and use of marine reserves under the Management Plan are reasonable and considered responses to the potential threats posed to achieving the objectives of the Management Plan.

The Management Plan does not affect the right of innocent passage for vessels to transit through areas, and does not affect vessels requiring safe harbour or rescue in emergencies, such as extreme weather.

Right to privacy

The Management Plan allows the Director in some instances to require users of the marine reserves to provide information about the activities they conduct within the marine reserves. This potentially includes commercial-in-confidence information such as the location of the activity or number of people undertaking an activity. The right to privacy is not absolute, and any requests for information are used to inform future management arrangements. The information collected will be handled and managed in accordance with the Commonwealth Privacy legislation.

Right to enjoy and benefit from culture

The right to enjoy and benefit from culture includes allowing people to take part in cultural life and enjoy the benefits of scientific progress. The Management Plan promotes this right by seeking to involve interested stakeholders, the community and Indigenous people in management actions through recognising native title interests and by implementing a number of strategies and actions (such as Strategy six of the Management Plan: *Support involvement of Indigenous peoples in management of Commonwealth Marine Reserves*). The Management Plan may limit this right in some instances where proposed activities are not consistent with the primary objectives of the Management Plan to protect and conserve biodiversity and other natural and cultural values. However, these instances are expected to be rare, and will be carefully considered prior to a decision being taken. Section 8 of the EPBC Act does not affect the operation of the *Native Title Act 1993* including s.211 of that Act, which allows native title holders to hunt (and undertake other activities) in the exercise of native title rights without a permit or licence.

Conclusion

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate.