



# Australian Government

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## Director of National Parks

### EXPLANATORY STATEMENT

*Environment Protection and Biodiversity Conservation Act 1999*

### **South-west Marine Parks Network Management Plan 2018**

#### **Background**

The South-west Marine Parks Network (the South-west Network) consists of 14 Commonwealth marine parks that lie off the coast of Western and South Australia. The Commonwealth reserves that form the South-west Network were declared by Proclamation under section 344 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 12 December 2013 as amended by a Proclamation made under section 350 of the Act on 9 October 2017 to change the name of the reserves from “Commonwealth Marine Reserve” to ‘Marine Park’.

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

The South-west Network includes the following marine parks:

- Southern Kangaroo Island Marine Park
- Western Kangaroo Island Marine Park
- Western Eyre Marine Park
- Murat Marine Park
- Great Australian Bight Marine Park
- Twilight Marine Park
- Eastern Recherche Marine Park
- South-west Corner Marine Park
- Bremer Marine Park
- Geographe Marine Park
- Perth Canyon Marine Park
- Two Rocks Marine Park
- Jurien Marine Park
- Abrolhos Marine Park

The marine parks of the South-west 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 marine parks help to protect include:

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

### **Overview of the Legislative instrument**

The EPBC Act and associated Regulations prohibit certain activities from occurring in the South-west Network and other Commonwealth reserves unless permitted by a management plan prepared in accordance with Section 368 of the EPBC Act. A management plan is therefore an enabling document. It allows management, recreational and commercial activities to occur that would otherwise be restricted under EPBC legislation.

The South-west Marine Parks Network Management Plan 2018 also sets out programs 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 within the South-west network.

### **Structure and Content of the Management Plan**

The Management Plan consists of two Chapters, each with two parts and five schedules:

- Chapter 1 Introduction includes:
  - *Part 1 Managing Australian Marine Parks* outlines the context and approach to managing marine parks.
  - *Part 2 The South-west Marine Parks Network* provides a summary of the South-west Network including natural, cultural, heritage, social and economic values, the pressures facing the Network and the management programs and actions to protect values and manage pressures.
- Chapter 2 Management and prescriptions includes:
  - *Part 3 Zoning* details the International Union for the Conservation of Nature (IUCN) categories assigned to each marine park and zone, and provides zone objectives.
  - *Part 4 Managing activities* provides the rules about what activities can and cannot occur within zones, and outlines the assessment and decision-making processes and the types of authorisations (permits, class approvals, commercial activity licences and leases).
  - *Glossary* lists terms and words used in the plan.
- Five Schedules
  - *Schedule 1 Summary of legislative and policy contexts* includes the legislative and policy context for managing marine parks with respect to the EPBC Act and EPBC Regulations, and other relevant legislation and international agreements.
  - *Schedule 2 South-west Network overview and values* provides a summary of the marine parks as proclaimed, a description of values and a map for each park.

- *Schedule 3 Environmental features used in design of the South-west Network* describes the environmental features used to identify areas for protection in the marine parks. These include bioregions, depth ranges, seafloor features and key ecological features.
- *Schedule 4 South-west Network marine parks and zone boundary descriptions* lists the coordinates of each marine park and zone.
- *Schedule 5 Supporting information* lists references used in preparing this plan.

### **Consultation**

On 5 September 2016, 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 the Environment and Energy's website. The Notice of Intent invited comment on the Director of National Park's proposal to prepare draft management plans for the South-west, North-west, North, Temperate East Networks and the Coral Sea Marine Park. Invitations to comment were also provided to Native Title representative bodies, peak Indigenous representative bodies, Native Title holders, Indigenous research institutions and Indigenous ranger organisations interested in the marine parks of the South-west Network.

This comment period closed on 31 October 2016 with a total of 54 332 submissions received. The comments received were considered in preparing the Draft Management Plan.

The draft Management Plan for the South-west Network was released for public comment on 21 July 2017. As required under the EPBC Act, the Director published a notice inviting comments on the draft Management Plan in the *Australian Government Gazette*, *The Australian* and relevant State circulating newspapers and on the department's website. 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 plan closed on 20 September 2017. A total of 82,877 submissions were received.

The Minister considered all comments received in approving the Management Plan.

### **Regulation Impact Statement**

In accordance with requirements for new regulatory instruments, a Regulatory Impact Statement has been prepared.

### **Period of Operation**

The Management Plan will come into effect on 1 July 2018. It will cease to have effect on 30 June 2028, unless revoked earlier and replaced by a new Management Plan.

### **Legislative Instrument**

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

## **Statement of Compatibility with Human Rights**

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

### **South-west Marine Parks Network Management Plan 2018**

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 EPBC Act and associated Regulations prohibit certain activities from occurring in the South-west Network and other Commonwealth reserves unless permitted by a management plan prepared in accordance with Section 368 of the EPBC Act. A management plan is therefore an enabling document. It allows management, recreational and commercial activities to occur that would otherwise be restricted under EPBC legislation.

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#### **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 parks, and in particular contains the Indigenous engagement program and actions that support involvement of marine users and Indigenous people in managing the South-west 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 marine parks. 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 parks 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 places some limits on innocent passage through the territorial sea and freedom of navigation through the exclusive economic zone under the United Nations Convention on the Law of the Sea (UNCLOS). The limitations apply to protect the environmental values and habitats of

certain areas and are consistent with Australia's rights and obligations under UNCLOS; and also do not affect vessels responding to circumstances of force majeure or distress (eg. due to extreme weather) or for the purpose of rendering assistance to other persons and vessels in danger or distress.

#### *Right to privacy*

The Management Plan allows the Director in some instances to require users of the marine parks to provide information about the activities they conduct within the marine parks. 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 principles, programs and actions. The Management Plan may limit this right in some instances where proposed activities are not consistent with the primary objective 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 undertaken. Section 8 of the EPBC Act does not affect the operation of the *Native Title Act 1993* including of 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.