

**Procedural Guidelines for Western Australian
Marine Reserve Planning and Management
Legislation – Act Amendment (Marine Reserves)
Act 1997**

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**MARINE CONSERVATION RESERVES
INITIAL MANAGEMENT PLANNING AND RESERVATION PROCESS
(A GUIDE)**

BEFORE NOI TO RESERVE PUBLISHED

1. Candidate area identified.
2. Agreement for pre NOI work to commence is sought from Ministers for Fisheries and Mines.
3. Pre NOI work comprises determination of suitable boundaries etc. and data and management policy preparation for a proposed indicative management plan. An advisory committee involving stakeholders will generally be established to assist in this work.
4. Assessment of biological and other natural resources in candidate area undertaken or updated if not already available with regard to candidate area.
5. The Marine Parks and Reserves Authority (MPRA) reports to Minister on reservation proposal when pre NOI work complete [s], including presentation of a proposed indicative management plan suitable for public release.
6. Assessment of resources (incl. staff) required for management to be undertaken and provided to Cabinet for consideration and determination.
7. Agreement to publication of NOI to reserve sought from Ministers for Fisheries and Mines. [s]
8. Immediately prior to publication of a NOI the proposed indicative management plan must be issued. [s]

PUBLICATION AND CONTENT OF NOI TO RESERVE AND OTHER REQUIREMENTS

9. Subject to agreement (see 7 above) and availability of the proposed indicative management plan (see 3, above), NOI is published in the *Government Gazette*, newspapers etc. [s]
10. The NOI must contain proposed boundaries, reserve purpose, indication re making a proposed reserve Class A, where relevant map and proposed indicative management plan can be inspected and obtained, how written submissions will be dealt with, proposed zoning (and in the case of a proposed marine park any intended declarations about compatibility of activities in recreation and special purpose zones), other relevant information [s]
11. A copy of the proposed indicative management plan must be submitted to the Ministers for Fisheries and Mines to formally provide them with the opportunity to make a submission. [s]
12. The minimum period for response to the NOI is 3 months except that each relevant local government must be notified and given a reasonable time to prepare a written submission [s]

POST NOI REQUIREMENTS REGARDING RESERVATION ORDER

13. The MPRA must provide a report to the Minister on the submissions received in response to the NOI to reserve. [s]
14. The Minister must be satisfied that an indicative management plan gives effect to or takes into consideration submissions of the Ministers for Fisheries and Mines to the extent provided for in legislation. [s]
15. Agreement to reservation must be sought from the Ministers for Fisheries and Mines. [s]
16. If it is proposed that a marine park or marine management area be made Class A when reservation is made, then the agreement of the Minister for Mines in this respect is also required. [s]
17. Agreement to the intended management zoning scheme of a marine park or a marine management area must be sought from the Ministers for Fisheries and Mines. [s] The intended management zoning scheme would be described in the indicative management plan.

RESERVATION AND IMMEDIATE POST RESERVATION

18. After the Minister receives agreement to reservation from the Ministers for Fisheries and Mines, the Governor in Executive Council makes the order to reserve the candidate area and, where applicable, make it Class A. [s]
19. The reservation order must be published in the *Government Gazette*. [s]
20. Every reservation order must be tabled in each House of Parliament, where it may be subject to a motion of disallowance. [s]
21. Subject to receipt of agreement (see 17 above), a section 62 classified area notice made by the Minister effecting a management zoning scheme must be made as soon as practicable after reservation and published in the *Government Gazette*. [s]
22. Once the reservation order is made the Minister may approve the final indicative management plan and notice of approval must be published in the *Government Gazette*. [s]
23. All marine nature reserves, marine parks and marine management areas are automatically vested in the MPRA. [s]

NOTES

- (a) NOI = "Notice of Intent", ie public notice of a proposal to reserve "Western Australian waters" as a marine nature reserve, a marine park or a marine management area;
- (b) [S] designates a statutory requirement;
- (c) a proposed addition to an existing marine conservation reserve has to be treated as a proposed new reservation and is subject to the processes described above;
- (d) above description does not take into account proposed changes to management zoning after initial classified area (management zone) notice made and where proposed changes would

not be in accordance with an approved indicative management plan; in such cases proposed changes to management zones have to be advertised and an opportunity given for submissions to be made on the proposed changes;

- (e) ideally, a reservation/Class A order, classified area(s) (management zoning) notice, and approval of indicative management plan notice will be published in the same issue of the *Government Gazette*;
- (f) this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Establishment of Management Zones (Classified Areas)"; "Management Plans"; "Aquaculture and Pearling"; "Commercial Fishing"; "Recreational Fishing"; "Petroleum Exploration and Production"; and "Mining Tenements and Mining".

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**MARINE CONSERVATION RESERVES
ESTABLISHMENT OF MANAGEMENT ZONES (CLASSIFIED AREAS)
(A GUIDE)**

MANAGEMENT ZONES IN INDICATIVE MANAGEMENT PLANS

Indicative management plans are prepared before a NOI to reserve is published and are released for public comment as part of the NOI process.

The intended management zoning scheme for a proposed marine conservation reserve will be set out in the indicative management plan and will therefore be available for public comment prior to the establishment of a marine conservation reserve.

The requirement for indicative management plans to be prepared and released for public comment prior to reservation was introduced through the *Acts Amendment (Marine Reserves) Act 1997* [Amendment Act] which commenced operation on 29 August 1997.

ESTABLISHMENT OF MANAGEMENT ZONES AS CLASSIFIED AREAS

(a) Standing of management zones

Activities which may be permitted or are excluded from certain management zones in marine parks are prescribed under section 13B of the CALM Act which provides for the purposes of marine parks.

Exclusion does not actually occur until the relevant management zone is formally established by a classified area notice made under section 62 of the CALM Act and exclusion of an existing right by precluding its renewal etc. may not occur until sometime after formal establishment of a zone. [s]

Existing rights to carry out an activity in a marine park which may be affected by management zoning are preserved to varying degrees (see sections 13D and 13E of the CALM Act and section 24A of the *Mining Act 1978*). [s]

Each management zone in a marine conservation reserve will attain legal standing when it is made a classified area under section 62 of the CALM Act (cf. possible effect in marine parks above) [s]. A classified area notice made under section 62 can be cited in legislation, eg. regulations.

(b) Management zones in a reserve established pre-Amendment Act

In the absence of a CALM Act Part V management plan for a marine conservation reserve established pre-Amendment Act, a management zone can be established as a classified area provided it is in conformity with the objectives of management plans prescribed in section 56 of the CALM Act. For marine conservation reserves the objectives of management plans are to achieve the purposes of reservation as set out in sections 13A, 13B and 13C of the CALM Act. [s]

In any other case, the establishment of a management zone as a classified area in a pre-Amendment Act marine conservation reserve must be in conformity with the relevant Part V management plan for the reserve unless the public consultation process described below is complied with (see last paragraph under (d)). [s]

(c) Initial and subsequent zones in a reserve established post-Amendment Act

If a reservation proposal is progressed and an order made for reservation, the classified area notice formally establishing the management zones in the approved indicative management plan must be made as soon as practicable after reservation. [s]

Establishment of management zones as classified areas must conform with an approved indicative management plan and, on replacement of the indicative management plan, conform with the relevant Part V management plan unless the public consultation process described below is complied with (see last paragraph under (d)). [s]

(d) General requirements

The formal establishment of management zones as classified areas by notice published in the *Government Gazette* is made by the Minister under section 62 of the CALM Act after consultation with the Marine Parks and Reserves Authority (MPRA). [s]

If establishment of a classified area is considered a matter of urgency, the Minister can proceed without the advice of the MPRA but this course of action is subject to tabling of the Minister's decision in Parliament [s], ie establishment of a zone as a matter of urgency will be an action of exception not the rule.

The concurrence of the Minister for Fisheries and the Minister for Mines is required before a management zone is established as a classified area or an amendment is made to an existing management zone in a marine park or a marine management area irrespective of urgency (see above) [s]

If the establishment or amendment of a management zone as a classified area is not provided for in a management plan and the Minister is not establishing the zone as a matter of urgency, the proposed establishment or amendment must be advertised to provide the public with an opportunity to make written submissions on the proposal (minimum period for public submissions is 2 months; consideration must be given to submissions received). [s]

MARINE PARK MANAGEMENT ZONES

There are four management zones applicable to marine parks, they are recreation, general use, sanctuary and special purpose.

A permissible and exclusion zoning scheme in respect of the activities which may occur in all four of these marine park zones is derived from the prescribed purposes of marine parks in section 13B of the CALM Act and the exclusion of certain activities from certain zones described there. [s]

The marine park permissible and exclusion zoning scheme does not affect the operation of the *Environmental Protection Act 1986*. Similarly, it does not apply to the other multiple-use marine conservation reserve, "marine management area" [s]

(i) Recreation zones

In a recreation zone specified recreational activities consistent with conservation of natural resources are permissible.

Should recreational fishing be considered incompatible with another recreational activity, then it can only be excluded on the basis of this incompatibility if a declaration about incompatibility is provided in the relevant section 62 classified area notice. [s]

In the case of new reserves, the intention to exclude a recreational activity from a recreation zone must be publicised through the NOI process and be specifically mentioned in the NOI. [s]

Commercial operations for recreational activities are regulated under the CALM Act. The activity of recreational fishing is regulated under the *Fish Resources Management 1994* (FRMA). [s]

Commercial fishing, aquaculture and pearling and hatchery activities are not permitted in recreation zones. Similarly, exploratory drilling for and the production of petroleum, and disturbance by mining are not permissible activities in marine park recreation zones. [s]

(ii) General use zones

In a general use zone commercial and recreational activities consistent with the conservation of natural resources are permissible

For example, commercial and recreational fishing and aquaculture under the FRMA are permissible activities as are pearling and hatchery activities under the *Pearling Act 1990*. Similarly, exploratory drilling for and the production of petroleum, and mining are permissible activities subject to the petroleum and mining legislation and the *Environmental Protection Act 1986*. [s]

(iii) Sanctuary zones

A sanctuary zone provides for the total protection of environmental values, while the limited range of recreational uses consistent with the protection of these values are permissible.

A sanctuary zone will usually be established to provide the highest level of protection to vulnerable or special interest biota and to protect areas of representative marine ecosystems so that they are free of disturbance and other areas so that marine life can be seen and studied in an undisturbed state.

Exploratory drilling for and the production of petroleum, mining, commercial and recreational fishing, aquaculture and pearling are all activities which are not permitted in sanctuary zones. [s]

(iv) Special purpose zones

A special purpose zone can be established for any purpose or purposes where the purposes assigned to recreation, general use and sanctuary zones are inappropriate for the values intended to be protected and the activities to be managed in a particular area of a marine park

A combination of commercial and/or recreational uses could be permissible activities in a special purpose zone.

If the activities of commercial fishing; recreational fishing; aquaculture; pearling; exploratory drilling for or production of petroleum; or exploration or mining which disturbs the sea bed are considered incompatible with a conservation purpose to be assigned to a special purpose zone, then the activity can be excluded on the basis of this incompatibility provided a declaration about incompatibility is provided in the relevant section 62 classified area notice. [s]

In the case of new reserves, the intention to exclude an activity from a special purpose zone because it is deemed to be incompatible with a conservation purpose intended to be assigned to the zone must be publicised through the NOI process which provides the public with the opportunity to comment on proposed management zoning and be specifically mentioned in the NOI. [s]

ZONES IN MARINE NATURE RESERVES AND MARINE MANAGEMENT AREAS

There is no equivalent marine park permissible and exclusion zoning scheme established for marine nature reserves or marine management areas. As with marine parks, activities in these reserves are subject to the *Environmental Protection Act 1986* if they are likely to have a significant effect on the environment.

The types of activities that may be permitted to occur in a marine nature reserve are limited and the likelihood of requiring zoning to separate activities is therefore low. Nonetheless, should the need arise, to further protect environmental values, management zones can be established in a marine nature reserve.

In the case of marine management areas, these reserves are overtly multiple-use and there will be limited application of management zoning to constrain certain activities. The formal establishment of a management zone in a marine management area cannot diminish or remove an existing right to carry out activities such as commercial or recreational fishing, aquaculture, pearling, exploration for and production of petroleum and mining or similarly inhibit or prevent new proposals to carry out such activities from being progressed.

NOTES

- (a) NOI = "Notice of Intent" is public notice of a proposal to reserve "Western Australian waters" as a marine nature reserve, a marine park or a marine management area under the CALM Act;
- (b) pre-Amendment Act = before 29 August 1997;
- (c) post-Amendment Act = after 29 August 1997;
- (d) CALM Act = the *Conservation and Land Management Act 1984*;
- (e) [s] designates a statutory requirement.
- (f) this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process"; "Management Plans"; "Aquaculture and Pearling"; "Commercial Fishing"; "Recreational Fishing"; "Petroleum Exploration and Production"; and "Mining Tenements and Mining".

MARINE CONSERVATION RESERVES MANAGEMENT PLANS (A GUIDE)

GENERAL

With commencement of the *Acts Amendment (Marine Reserves) Act 1997* [Amendment Act], the preparation of indicative management plans under the CALM Act before a marine conservation reserve is established became a statutory requirement.

Therefore, for marine conservation reserves established post-Amendment Act, the first management plan that will apply to the reserve is an indicative management plan which will effectively apply to management from the day on which reservation is made or as soon as practicable thereafter.

Indicative management plans are, in due course, replaced by CALM Act Part V management plans which are prepared by the Marine Parks and Reserves Authority through the agency of CALM.

For marine conservation reserves established pre-Amendment Act that did not have a management plan in place when the Amendment Act commenced operation, the first management plan that will apply to the reserve is a CALM Act Part V management plan. For those reserves established pre-Amendment Act which have an operative management plan the plan continues in force.

Indicative management plans and CALM Act Part V management plans are published in draft form for the purpose of enabling public consultation on the proposed management policies, objectives and prescriptions set out in the plans prior to their finalization and subsequent formal approval by the Minister.

Management plans commence operation once notice of their approval by the Minister is published in the *Government Gazette* or at some later date specified in the notice of approval.

It is policy that management plans will contain clear statements on —

- (i) the purpose and background of the plan;
- (ii) the resource information on which the plan is based;
- (iii) management issues, and discussion of options where appropriate; and
- (iv) management prescriptions, including sections on implementation and monitoring.

A planning framework that will enable the statutory objectives of management plans for marine conservation reserves to be met, ie. to achieve the purposes prescribed for the relevant category of reserve in the CALM Act, a statement of policies or guidelines proposed to be followed and a summary of the operations proposed to be undertaken must be provided in both indicative and CALM Act Part V management plans.

Both indicative and Part V management plans can operate for a period of up to 10 years. Where the operative period of a management plan has expired, the reserve continues to be managed in accordance with the plan until it is replaced with a new approved plan. The Marine Parks and Reserves Authority is responsible for the review of expiring plans.

A management plan can be amended or revoked and a new plan substituted for it at any time during its operative period provided all of the requirements applicable to preparation and approval of management plans are complied with, eg. public consultation, referral to local government and Ministers, etc.

Management zones in approved management plans are formally established by being made classified areas under section 62 of the CALM Act by notice of the Minister published in the *Government Gazette*.

INDICATIVE MANAGEMENT PLANS

Indicative management plans are initially prepared as a draft for public comment for release in conjunction with the publication of a proposal to reserve Western Australian waters as a marine nature reserve, a marine park or a marine management area (publication of such a proposal is often referred to as a notice of intent to reserve or, simply, a NOI).

The Minister for Fisheries' and the Minister for Mines' approval is required before a NOI is published and their concurrence is subsequently required to the progression of a submission to the Governor that a reserve be established. The agreement of these Ministers is therefore also sought with regard to the commencement of pre-NOI work which includes the determination of suitable boundaries etc. and data and management policy preparation for the draft/proposed indicative management plan. An advisory committee involving stakeholders will generally be established to assist in this work.

When the pre-NOI work is complete the Marine Parks and Reserves Authority will report to the Minister on the reservation proposal and present the Minister with a proposed indicative management plan suitable for public release for comment as part of the NOI process.

The indicative management plan intended for public release will provide details on proposed boundaries, reserve purpose, proposals with regard to making a reserve Class A, proposed management zoning and such other information applicable to a planning framework, policies and proposed operations for management of the proposed reserve.

In the case of marine parks, because of the effect the management zoning scheme will eventually have on activities which may be permissible in or excluded from a marine park or parts of a marine park, the indicative management plan must set out the siting and categories of management zones intended to be established and, where applicable, whether it is intended that declarations will be made about the compatibility of activities in recreation and special purpose zones.

After publication of the NOI, the Ministers for Fisheries and Mines are provided with a copy of a proposed indicative management plan for every marine park or marine management area so that they may formally respond to the plans.

Written public submissions on a NOI and proposed indicative management plan can be made over a specified period of not less than 3 months. Each relevant local government has to be notified separately about reservation proposals and be provided a reasonable time to prepare written submissions on the proposal.

Before progressing a reservation order the Minister must also receive a report from the Marine Parks and Reserves Authority on the submissions received in response to the NOI. Many of these submissions will include comments on the proposed indicative management plan and finalization of the plan for the Minister's approval is made while taking such comments into account.

Once an order for reservation has been made, the Minister can approve an indicative management plan for the reserve. For plans which apply to a marine park or a marine management area, approval is made on the basis that the Minister is satisfied that submissions of the Minister for Fisheries and the Minister for Mines have been taken into account to the extent provided for in the CALM Act (this requirement is described in more detail below as it similarly applies to the approval of Part V management plans).

PART V MANAGEMENT PLANS

Existing reserves, ie. those established pre-Amendment Act, are not subject to the indicative management plan requirements but to an equivalent management planning process provided in Part V of the CALM Act.

On commencement of the Amendment Act on 29 August 1997, there were six marine parks and one marine nature reserve that had already been established by order of the Governor under section 13 of the CALM Act. Progress in management planning for these reserves at that time is shown below:

(a) Operative plans

Ningaloo Marine Park Management Plan 1989 - 1999;
 Marmion Marine Park Management Plan 1992 - 2002;
 Shark Bay Marine Reserves Management Plan 1996 - 2006 (applies to both Shark Bay Marine Park and Hamelin Pool Marine Nature Reserve);

(b) Draft plans awaiting finalization after formal public comment period

Shoalwater Islands Marine Park Draft Management Plan 1995;
 Swan Estuary Marine Park and Adjacent Nature Reserves Draft Management Plan 1996;

(c) Draft plans in preparation

Rowley Shoals Marine Park Draft Management Plan.

The required content of Part V management plans is addressed above (see "General"). Essentially, the objectives of management plans for marine nature reserves, marine parks and marine management areas are to achieve or promote the prescribed purposes for which these reserves are established and vested in the Marine Parks and Reserves Authority.

Draft Part V management plans are released for public comment for a period of at least 2 months. Each relevant local government has to be provided with a reasonable time to provide written submissions on the draft plan.

With regard to draft management plans for marine parks and marine management areas, the Marine Parks and Reserves Authority has to submit the plans to the Minister for Fisheries and the Minister for Mines to enable them to formally respond to the plan.

Approval of a Part V management plan for a marine park or marine management area by the Minister is made on a similar basis to that applying to the approval of an indicative management plan for these reserve categories, eg. the Minister is satisfied that submissions of the Minister for Fisheries and the Minister for Mines to the Marine Parks and Reserves Authority have been taken into account in the final plan submitted for approval, to the extent provided for in the CALM Act.

A final plan for a marine park or a marine management area must give effect to a submission of the Minister for Fisheries with regard to the activities of aquaculture, commercial or recreational fishing or pearling activity and give due consideration to a submission addressing other matters related to the administration of the *Fish Resources Management Act 1994* and the *Pearling Act 1990*.

With regard to a submission from the Minister for Mines, a final management plan for a marine park or a marine management area must give effect to a submission with regard to mining or petroleum related exploration or production activities or the administration of the *Mining Act 1978*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Pipelines Act 1969*.

If the Minister disagrees with changing a plan to comply with a submission from either of these Ministers, the matter would be decided by Cabinet as, ultimately, the only recourse for the Minister to proceed would be for the plan to be referred to the Governor to make a decision on the matter.

NOTE

- (a) pre-Amendment Act = before 29 August 1997;
- (b) post-Amendment Act = after 29 August 1997;
- (c) CALM Act = the *Conservation and Land Management Act 1984*;
- (d) Part V of the CALM Act applies to all reserves subject to the Act not just marine conservation reserves, eg. national parks, timber reserves, etc.;
- (e) above description does not take into account proposed changes to management zoning after initial classified area (management zone) notice made and where proposed changes would not be in accordance with an approved indicative or Part V management plan; in such cases proposed changes to management zones have to be advertised and an opportunity given for public submissions to be made on the proposed changes;
- (f) this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process"; "Establishment of Management Zones (Classified Areas)"; "Aquaculture and Pearling"; "Commercial Fishing"; "Recreational Fishing"; "Petroleum Exploration and Production"; and "Mining Tenements and Mining".

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MARINE CONSERVATION RESERVES AQUACULTURE AND PEARLING (A GUIDE)

GENERAL

Aquaculture and pearling are activities which require the setting aside and occupation of specified sites and the establishment of infrastructure at those sites.

Licensing and leasing of aquaculture sites / operations other than aquaculture of the pearl oyster, *Pinctada maxima*, is subject to the provisions of the *Fish Resources Management Act 1994* (FRMA). Pearling and hatchery activities using the pearl oyster, *Pinctada maxima*, are subject to the licensing and leasing requirements of the *Pearling Act 1990*.

Apart from possible environmental impacts, the occupation of sites for aquaculture and pearling purposes may also effectively or necessarily deny or prevent access to those sites by other users of the marine environment.

In marine conservation reserves there are certain constraints placed on these activities. These constraints were established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997* (the Amendment Act) to the *Conservation and Land Management Act 1984* (CALM Act), the FRMA and the Pearling Act.

The possible effect of establishing a marine conservation reserve or a management zone in a marine conservation reserve is subject to public and Ministerial scrutiny prior to their establishment. For example, the Minister for Fisheries concurrence is required with respect to the publication of a notice of intent to reserve; progression of reservation after the public consultation period; the content of management plans where they affect fishing, aquaculture and pearling; and the establishment of management zones in marine parks and marine management areas.

None of these matters derogate from the operation of the *Environmental Protection Act 1986*.

EXISTING LICENCES, LEASES, ETC.

Where a marine conservation reserve or a marine park management zone which precludes aquaculture or pearling is established over an area which includes or overlaps with an existing aquaculture or pearling licence or lease, then the licence or lease remains valid (is preserved) and runs until its designated expiry date but it cannot be renewed.

In the case of a preserved lease where the lessee requires a licence to operate in the lease area, subject to the FRMA and the Pearling Act, the relevant licence can be granted and is renewable throughout the term of the lease.

With regard to a preserved pearl farm lease, while such a lease may have been granted for a term of up to 21 years it is subject to annual renewal. Preserved pearl farm leases may be renewed annually throughout the term of the lease under the Pearling Act.

Holding and dump sites for pearl oyster are established by notice under the Pearling Act and remain valid until the relevant notice is repealed. Their continued utilization is dependent on when a preserved licence or lease applicable to the site expires.

MARINE NATURE RESERVES

In marine nature reserves aquaculture and pearling activities are not permitted.

Aquaculture and pearling licences and leases applying to an area which subsequently becomes reserved as a marine nature reserve remain valid until their designated expiry date (see above).

No new licences or leases for aquaculture and pearling activities can be granted for an area once the area is established as a marine nature reserve.

MARINE PARKS

In marine parks aquaculture and pearling activities are not excluded but may be permitted in appropriate management zones.

There are four management zones that may be applied in a marine park, namely a recreation zone, a sanctuary zone, a general use zone and a special purpose zone. To be formally established these management zones have to be made classified areas under the CALM Act by notice of the Minister published in the *Government Gazette*.

Subject to normal assessment processes, aquaculture and pearling activities are generally permissible in marine park general use zones and certain special purpose zones. If a conflict or inconsistency arises with respect to marine park purpose and approved aquaculture or pearling in a general use zone or a special purpose zone where these activities are permitted, then the FRMA or the Pearling Act prevails.

Existing licences and leases for aquaculture and pearling in an area which subsequently becomes a permissible management zone in a marine park may be renewed provided their continued operation is consistent with a CALM Act management plan applying to the area. If a management plan is not in place, then the Minister for Fisheries must consult the Minister administering the CALM Act and take that Minister's recommendation into account.

New licences and leases with respect to aquaculture and pearling activities may be granted for operations in a permissible marine park management zone provided the Minister administering the CALM Act approves the granting of the licence or lease.

The "conversion" of an existing aquaculture or pearling licence to a lease by the granting of a lease over the licensed area in a permissible marine park management zone does not require the approval of the Minister administering the CALM Act provided granting of the lease is consistent with the management plan applying to the area. If a CALM Act management plan is not in place, then the Minister for Fisheries must consult with and take the CALM Act Minister's recommendation into account before granting the lease.

The special purpose zones where aquaculture and pearling are not permitted are those where it has been declared by the Minister administering the CALM Act that these activities are incompatible with a conservation purpose specified in the relevant classified area notice. The other marine park management zones where these activities are not permitted are sanctuary and recreation zones (see also "Existing Licences, Leases, etc." above).

Marine park special purpose management zones can also be established to expressly, but not necessarily exclusively, provide for the activities of aquaculture and pearling.

MARINE MANAGEMENT AREAS

Marine management areas are reserved to manage and protect the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

Commercial purpose has been defined in the CALM Act to include aquaculture, pearling and hatchery activities, and associated activities, ie. aquaculture and pearling are expressly recognized as permissible activities in the context of reserve purpose.

In marine management areas the activities of aquaculture and pearling are therefore permissible activities subject to normal assessment processes.

The exclusion and permissible zoning scheme that applies in marine parks does not apply to marine management areas.

Renewal of existing and granting of new aquaculture and pearling licences and leases in marine management areas is subject to the same requirements as those described above with respect to these activities in the permissible marine park management zones. The same process with regard to the "conversion" of a licence to a lease over the licence area in a permissible marine park management zone similarly applies in a marine management area.

If a conflict or inconsistency arises with regard to aquaculture or pearling and the purpose of a marine management area, then the FRMA or the Pearling Act prevails.

COMPENSATION

Where the establishment of a marine nature reserve or a marine park or the establishment of an exclusion zone in a marine park under the CALM Act is claimed to have reduced the commercial value of an aquaculture or pearling licence or lease, the relevant licensee or lessee (affected person) may be eligible for compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*. This Act is administered by the Minister for Fisheries.

NOTES:

- (a) the matters described in this guide are derived from the provisions of the CALM Act, the FRMA and the Pearling Act as amended by the *Acts Amendment (Marine Reserves) Act 1997*.
- (b) this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process"; "Establishment of Management Zones (Classified Areas)"; "Management Plans"; "Commercial Fishing"; "Recreational Fishing"; "Petroleum Exploration and Production"; and "Mining Tenements and Mining".

AQUACULTURE AND PEARLING IN MARINE CONSERVATION RESERVES
GRANT OF NEW AND RENEWAL OF LICENCES AND LEASES

There are certain constraints that apply to aquaculture and pearling operations in marine conservation reserves

Whether the grant or renewal of licences and leases can be undertaken is illustrated in the table below subject to notes A, B and C:

A a licence or lease applying to an area which subsequently becomes a marine nature reserve or an exclusion zone in a marine park (sanctuary, recreation and certain special purpose zones), is preserved until its designated expiry date but can not be renewed except where a licence is required to operate in the area subject to a preserved lease, in which case the necessary licence may be renewed throughout the term of the lease; in marine management areas and permissible zones in marine parks renewal of a preserved authorization is subject to C below;

B new licences and leases may be granted subject to the approval of the CALM Act Minister;

C licences and leases may be renewed or 'converted' if renewal or 'conversion' is consistent with the approved CALM Act management plan for the relevant reserve; or, in the absence of such a plan, if the Minister for Fisheries consults the CALM Act Minister and the CALM Act Minister's recommendation on renewal or 'conversion' is taken into account.

Grant and renewal of aquaculture and pearling licences and leases is subject to the *Fish Resources Management Act 1994* and the *Pearling Act 1990* as amended by the *Acts Amendment (Marine Reserves) Act 1997* which became operative on 29 August 1997.

	New Authorization (Licence or Lease)	Renewal of Authorization (Licence or Lease)	'Conversion' of licence area to leasehold
MARINE NATURE RESERVE	No	No	No
MARINE PARK			
General Purpose Zone	Subject to B, yes	Subject to C, yes	Subject to C, yes
Special Purpose (Permissible) Zone	Subject to B, yes	Subject to C, yes	Subject to C, yes
Special Purpose (Exclusion) Zone	No	No	No
Recreation Zone	No	No	No
Sanctuary Zone	No	No	No
MARINE MANAGEMENT AREA	Subject to B, yes	Subject to C, yes	Subject to C, yes

MARINE CONSERVATION RESERVES COMMERCIAL FISHING (A GUIDE)

GENERAL

Licensing and other management requirements affecting commercial fishing are subject to the provisions of the *Fish Resources Management Act 1994* (FRMA).

In marine conservation reserves there are certain constraints placed on commercial fishing. These constraints were established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997* (the Amendment Act) to the *Conservation and Land Management Act 1984* (CALM Act) and the FRMA.

A designated fishing zone under the FRMA for commercial fishing purposes cannot be established in a marine conservation reserve. Should a marine conservation reserve be established over an area which includes or overlaps with an existing designated fishing zone, then the designation or part of it affected by reservation ceases. Similarly, an FRMA exclusive licence for commercial fishing cannot be granted for an area that coincides with part of a marine conservation reserve.

The possible effect of establishing a marine conservation reserve or a management zone in a marine conservation reserve is subject to public and Ministerial scrutiny prior to their establishment. For example, the Minister for Fisheries' concurrence is required with respect to the publication of a notice of intent to reserve; progression of reservation after the public consultation period; the contents of management plans where they affect fishing, aquaculture and pearling; and the establishment of management zones in marine parks and marine management areas.

EXISTING AUTHORIZATIONS AND FISHERY MANAGEMENT PLANS

Where a marine nature reserve or a marine park management zone which precludes commercial fishing is established over an area which includes or overlaps the area subject to an existing commercial fishing authorization, then the authorization remains valid and runs until its designated expiry date but it cannot be renewed for that part of the area affected by the reservation or zoning.

In the case of an area subject to a management plan for a fishery made under section 54 of the FRMA, the management plan remains in force except to the extent that a commercial fishing authorization for that fishery cannot be granted over that part of the area subject to the fishery management plan which coincides with a marine nature reserve or a marine park management zone which precludes commercial fishing.

MARINE NATURE RESERVES

In marine nature reserves commercial fishing is not permitted.

A commercial fishing authorization applying to an area which subsequently becomes reserved as a marine nature reserve remains valid in respect of its operation in the reserved area until its designated expiry date (see above).

No new commercial fishing authorizations can be granted for an area once the area is established as a marine nature reserve.

MARINE PARKS

In marine parks commercial fishing is not excluded but may be permitted in appropriate management zones.

There are four management zones that may be applied in a marine park, namely a recreation zone, a sanctuary zone, a general use zone and a special purpose zone. To be formally established these management zones have to be made classified areas under the CALM Act by notice of the Minister published in the *Government Gazette*.

Commercial fishing is permissible in marine park general use zones and certain special purpose zones. If a conflict or inconsistency arises with respect to marine park purpose and commercial fishing in a general use zone or a special purpose zone where this activity is permitted, then the FRMA prevails.

Existing commercial fishing authorizations in an area which subsequently becomes a permissible management zone in a marine park are renewable under the FRMA.

New commercial fishing authorizations may be granted in accordance with the FRMA for commercial fishing operations in permissible marine park management zones. Similarly, fishery management plans under the FRMA can be established consistent with marine park management zoning.

The special purpose zones where commercial fishing is not permitted are those where it has been declared by the Minister administering the CALM Act that commercial fishing is incompatible with a conservation purpose specified in the relevant classified area notice. The other marine park management zones where commercial fishing is not permitted are sanctuary and recreation zones (see also "Existing Authorizations and Fishery Management Plans" above).

Marine park special purpose management zones can also be established for the purpose of allowing particular commercial fisheries to operate in areas with other compatible activities.

MARINE MANAGEMENT AREAS

Marine management areas are reserved to manage and protect the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

Commercial purpose has been defined in the CALM Act to include commercial fishing and associated activities, i.e. commercial fishing is expressly recognized as a permissible activity in the context of reserve purpose.

The exclusion and permissible zoning scheme that applies in marine parks does not apply to marine management areas.

Renewal of existing and granting of new commercial fishing authorizations to operate in marine management areas is subject to the FRMA. Similarly, the establishment of fishery management plans which include the waters of a marine management area may occur in accordance with the FRMA.

If a conflict or inconsistency arises with regard to commercial fishing and the purpose of a marine management area, then the FRMA prevails.

COMPENSATION

Where the establishment of a marine nature reserve or a marine park or the establishment of an exclusion zone in a marine park under the CALM Act is claimed to have reduced the commercial value of a commercial fishing authorization or a directly associated activity, eg. fish processing, the relevant licensee (affected person) may be eligible for compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*. This Act is administered by the Minister for Fisheries.

NOTE:

this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process"; "Establishment of Management Zones (Classified Areas)"; "Management Plans"; "Aquaculture and Pearling"; "Recreational Fishing"; "Petroleum Exploration and Production"; and "Mining Tenements and Mining".

DRAFT

MARINE CONSERVATION RESERVES RECREATIONAL FISHING (A GUIDE)

GENERAL

Licensing and other management requirements affecting recreational fishing are subject to the provisions of the *Fish Resources Management Act 1994* (FRMA).

In marine conservation reserves there are certain constraints placed on recreational fishing. These constraints were established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997* (Amendment Act) to the *Conservation and Land Management Act 1984* (CALM Act) and the FRMA.

The possible effect of establishing a marine conservation reserve or a management zone in a marine conservation reserve is subject to public and Ministerial scrutiny prior to their establishment. For example, the Minister for Fisheries' concurrence is required with respect to the publication of a notice of intent to reserve; progression of reservation after the public consultation period; the content of management plans where they affect fishing, aquaculture and pearling; and the establishment of management zones in marine parks and marine management areas.

EXISTING AUTHORIZATIONS

Where a marine nature reserve or a marine park management zone which precludes recreational fishing is established over an area which includes or overlaps an area subject to an existing recreational fishing authorization granted under the FRMA, then the authorization remains valid and runs until its designated expiry date but it cannot be renewed for that part of the area affected by the reservation or zoning.

MARINE NATURE RESERVES

In marine nature reserves recreational fishing is not permitted.

A recreational fishing authorization applying to an area which subsequently becomes reserved as a marine nature reserve remains valid in respect of its operation in the reserved area until its designated expiry date (see above).

No new recreational fishing authorizations can be granted for an area once the area is established as a marine nature reserve.

MARINE PARKS

In marine parks recreational fishing is not excluded but may be permitted in appropriate management zones.

There are four management zones that may be applied in a marine park, namely a recreation zone, a sanctuary zone, a general use zone and a special purpose zone. To be formally established these

management zones have to be made classified areas under the CALM Act by notice of the Minister published in the *Government Gazette*.

Recreational fishing is permissible in marine park general use zones, certain recreation zones and certain special purpose zones. If a conflict or inconsistency arises with respect to marine park purpose and recreational fishing in a general use zone, or a recreation or special purpose zone where this activity is permitted, then the FRMA prevails.

Existing recreational fishing authorizations in an area which subsequently becomes a permissible management zone in a marine park are renewable under the FRMA.

New recreational fishing authorizations may be granted in accordance with the FRMA for recreational fishing in permissible marine park management zones.

The recreation zones where recreational fishing is not permitted are those where it has been declared by the Minister administering the CALM Act that recreational fishing is incompatible with another recreational purpose specified in the relevant classified area notice.

The special purpose zones where recreational fishing is not permitted are those where it has been declared by the Minister administering the CALM Act that recreational fishing is incompatible with a conservation purpose specified in the relevant classified area notice. The other marine park management zone where recreational fishing is not permitted is the sanctuary zone (see also "Existing Authorizations" above).

Marine park special purpose management zones can also be established for the purpose of allowing particular recreational fishing activities to operate in areas with other compatible activities.

MARINE MANAGEMENT AREAS

Marine management areas are reserved to manage and protect the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

Recreational fishing is expressly recognized as a permissible activity in the context of reserve purpose.

The exclusion and permissible zoning scheme that applies in marine parks does not apply to marine management areas.

Renewal of existing and granting of new recreational fishing authorizations to operate in marine management areas is subject to the FRMA.

If a conflict or inconsistency arises with regard to recreational fishing and the purpose of a marine management area, then the FRMA prevails.

NOTE: this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process", "Establishment of Management Zones (Classified Areas)", "Management Plans", "Aquaculture and Pearling", "Commercial Fishing", "Petroleum Exploration and Production", and "Mining Tenements and Mining".

MARINE CONSERVATION RESERVES PETROLEUM EXPLORATION AND PRODUCTION (A GUIDE)

GENERAL

The authorizations and other management requirements affecting petroleum exploration and production are subject to the provisions of the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* and the *Pipelines Act 1969* (petroleum laws).

In marine conservation reserves there are certain constraints placed on petroleum exploration and production. These constraints were established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997* (the Amendment Act) to the *Conservation and Land Management Act 1984* (CALM Act). By amendment to the *Petroleum Act 1967* and the *Petroleum (Submerged Lands) Act 1982*, the Amendment Act also introduced requirements that the Minister be notified about authorizations before they were granted under these petroleum Acts to operate in a marine conservation reserve.

The possible effect of establishing a marine conservation reserve or a management zone in a marine conservation reserve is subject to public and Ministerial scrutiny prior to their establishment. For example, the Minister for Mines' concurrence is required with respect to the publication of a notice of intent to reserve; progression of reservation after the public consultation period; making a reserve Class A; the contents of management plans where they affect petroleum exploration or production, or mining, and the establishment of management zones in marine parks and marine management areas.

None of these matters derogate from the operation of the *Environmental Protection Act 1986*.

EXISTING ENTITLEMENTS AND PROGRESSION TO PRODUCTION

Where a marine nature reserve or a marine park management zone which precludes petroleum exploration and production is established over an area which includes or overlaps the area subject to an existing entitlement, the entitlement remains valid. These preserved entitlements can be renewed or extended and, where applicable, the holders of such entitlements can proceed to the production phase. The types of entitlements affected are drilling reservations, leases, licences, permits and pipeline licences granted under the petroleum laws.

Preserving existing entitlements, their renewal or extension, and the granting of authorizations to proceed to the production phase does not affect the operation of the *Environmental Protection Act 1986*.

MARINE NATURE RESERVES

In marine nature reserves exploratory drilling for, or production of petroleum is not permitted.

A petroleum entitlement applying to an area which subsequently becomes reserved as a marine nature reserve remains valid in respect of its operation in the reserved area and may be renewed or extended, or, where applicable, proceed to the production phase (see above).

No new petroleum entitlements can be granted for an area once the area is established as a marine nature reserve. Seismic surveys to complete data collection for resource targets that are either outside or accessible from outside the reserve may be permitted subject to environmental impact assessment.

MARINE PARKS

In marine parks exploratory drilling for and production of petroleum is not excluded but may be permitted in appropriate management zones. Seismic surveys may be permitted in a marine park to complete data collection subject to environmental impact assessment.

There are four management zones that may be applied in a marine park, namely a recreation zone, a sanctuary zone, a general use zone and a special purpose zone. To be formally established these management zones have to be made classified areas under the CALM Act by notice of the Minister published in the *Government Gazette*.

Exploratory drilling for and production of petroleum is permissible in marine park general use zones and certain special purpose zones subject to normal environmental impact assessment processes. If a conflict or inconsistency arises with respect to marine park purpose and exploratory drilling or production in a general use zone or a special purpose zone where this activity is permitted, then the relevant petroleum law prevails.

Existing petroleum entitlements in an area which subsequently becomes a marine park are preserved and can be renewed etc. as outlined above (see "Existing Entitlements and Progression to Production").

New petroleum entitlements may be granted and exercised in accordance with the relevant petroleum legislation and the Environmental Protection Act in permissible marine park management zones.

The special purpose zones where exploratory drilling or petroleum production is not permitted are those where it has been declared by the Minister administering the CALM Act that drilling or production is incompatible with a conservation purpose specified in the relevant classified area notice. The other marine park management zones where exploratory drilling for or production of petroleum is not permitted are sanctuary and recreation zones (see also "Existing Entitlements and Progression to Production" above).

Marine park special purpose management zones can also be established for the purpose of allowing exploratory drilling or petroleum production to operate in areas with other compatible activities.

Notwithstanding the above, in 1994 the Government announced that there would be no drilling for petroleum exploration and production in Ningaloo Marine Park. This policy remains in place.

MARINE MANAGEMENT AREAS

Marine management areas are reserved to manage and protect the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

Commercial purpose has been defined in the CALM Act to include seismic surveys and exploratory drilling for petroleum, production of petroleum, and associated activities, i.e. petroleum operations are expressly recognized as permissible activities in the context of reserve purpose.

The exclusion and permissible zoning scheme that applies in marine parks does not apply to marine management areas.

Renewal of existing and granting of new petroleum entitlements to operate in marine management areas are subject to the petroleum laws and the Environmental Protection Act.

If a conflict or inconsistency arises with regard to petroleum operations and the purpose of a marine management area, then the relevant petroleum law(s) prevail.

NOTE: this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely: "Initial Management Planning and Reservation Process"; "Establishment of Management Zones (Classified Areas)"; "Management Plans"; "Aquaculture and Pearling"; "Commercial Fishing"; "Recreational Fishing"; and "Mining Tenements and Mining".

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MARINE CONSERVATION RESERVES MINING TENEMENTS AND MINING (A GUIDE)

GENERAL

The authorizations and other management requirements affecting mining tenements and mining are subject to the provisions of the *Mining Act 1978*.

In marine conservation reserves there are certain constraints placed on exercising the rights conferred by mining tenements. These constraints were established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997* (the Amendment Act) to the *Conservation and Land Management Act 1984* (CALM Act) and, principally, the *Mining Act 1978*.

The possible effect of establishing a marine conservation reserve or a management zone in a marine conservation reserve is subject to public and Ministerial scrutiny prior to their establishment. For example, the Minister for Mines' concurrence is required with respect to the publication of a notice of intent to reserve; progression of reservation after the public consultation period; making a reserve Class A; the contents of management plans where they affect petroleum exploration or production, or mining; and the establishment of management zones in marine parks and marine management areas.

None of these matters derogate from the operation of the *Environmental Protection Act 1986*.

EXISTING TENEMENTS AND PROGRESSION TO MINING

Where a marine nature reserve or a marine park management zone which precludes mining is established over an area which includes or overlaps the area subject to an existing mining tenement, the entitlement remains valid. These preserved tenements can be renewed or extended and, where applicable, the holders of such entitlements can proceed to the mining phase subject to the Mining Act.

If a mining tenement exists over an area which subsequently becomes a marine park management zone where mining is a permissible activity or reserved as a marine management area then the tenement is similarly preserved.

Preserving existing mining tenements, their renewal or extension, and the granting of authorization to proceed to the mining phase does not affect the operation of the *Environmental Protection Act 1986*.

CONSULTATION AND CONCURRENCE

Mining by the holder of a mining tenement in a marine nature reserve or a marine park cannot occur without the Minister for Mines consulting the Ministers for the Environment, Fisheries and Transport. Similarly, consent to mine cannot be granted unless the Minister for the Environment has given concurrence to this occurring and the recommendations of the Ministers for Fisheries and Transport have been obtained.

If a mining operation is intended to be facilitated in a marine nature reserve or a marine park through the granting of a mining or general purpose lease, this cannot occur unless both Houses of Parliament have resolved to consent to this occurring. Parliament is also empowered to set such terms and conditions as it resolves to impose on a mining or general purpose lease applying to these reserves.

The Minister for Mines can grant the holder of a mining tenement in a marine management area consent to mine provided the Ministers for the Environment, Fisheries and Transport have been consulted and their recommendations obtained.

MARINE NATURE RESERVES

In marine nature reserves the disturbance of the sea bed or the subsoil beneath the sea bed by the holder of a mining tenement is not permitted.

A mining tenement applying to an area which subsequently becomes reserved as a marine nature reserve remains valid in respect of the reserved area and may be renewed or extended, or, where applicable, proceed to the mining phase (see above). Such operations remain subject to the Environmental Protection Act.

MARINE PARKS

In marine parks mineral exploration and mining which may involve the disturbance of the sea bed and the subsoil beneath the sea bed is not excluded but may be permitted in appropriate management zones.

There are four management zones that may be applied in a marine park, namely a recreation zone, a sanctuary zone, a general use zone and a special purpose zone. To be formally established these management zones have to be made classified areas under the CALM Act by notice of the Minister published in the *Government Gazette*.

Mineral exploration and mining is permissible in marine park general use zones and certain special purpose zones subject to normal environmental impact assessment processes. If a conflict or inconsistency arises with respect to marine park purpose and mineral exploration or mining in a general use zone or a special purpose zone where this activity is permitted, then the Mining Act prevails. This does not affect the operation of the Environmental Protection Act.

Existing mining tenements in an area which subsequently becomes a marine park are preserved and can be renewed etc. as outlined above (see "Existing Tenements and Progression to Mining")

New mining tenements may be granted and exercised in accordance with the Mining Act and the Environmental Protection Act.

The special purpose zones where mineral exploration and mining is not permitted are those where it has been declared by the Minister administering the CALM Act that disturbance of the sea bed and the subsoil beneath the seabed by these activities is incompatible with a conservation purpose specified in the relevant classified area notice. The other marine park management zones where disturbance of the seabed and the subsoil beneath the sea bed is not permitted are sanctuary and recreation zones (see also "Existing Tenements and Progression to Mining" above)

Marine park special purpose management zones can also be established for the purpose of allowing mineral exploration or mining to operate in areas with other compatible activities.

MARINE MANAGEMENT AREAS

Marine management areas are reserved to manage and protect the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

Commercial purpose has been defined in the CALM Act to include mining within the meaning of the *Mining Act 1978* and associated activities, ie. mining is expressly recognized as a permissible activity in the context of reserve purpose.

The exclusion and permissible zoning scheme that applies in marine parks does not apply to marine management areas.

Renewal of existing and granting of new mining tenements to operate in marine management areas are subject to the Mining Act and the Environmental Protection Act.

If a conflict or inconsistency arises with regard to mining and the purpose of a marine management area, then the Mining Act prevails. This does not affect the operation of the Environmental Protection Act.

NOTE: this guide should be read in conjunction with other Marine Conservation Reserve guides in this series, namely "Initial Management Planning and Reservation Process", "Establishment of Management Zones (Classified Areas)", "Management Plans", "Aquaculture and Pearling", "Commercial Fishing", "Recreational Fishing", and "Petroleum Exploration and Production"