



# Factsheet

## 17. Marine reserves

Western Australia has an extensive coastline, covering some 12,500 kilometres. This large area contains some of Australia's most significant marine environments, including the Shark Bay World Heritage Area, Ningaloo Reef, Abrolhos Islands and Recherche Archipelago, plus important breeding areas for a range of threatened migratory species, such as Southern Right Whale. Pressure on the marine environment is growing, through increased tourism and development, pollution and over exploitation of fish species. This fact sheet examines measures for protecting marine areas through the creation of marine parks and reserves. See also **Fact Sheet 11: Conservation reserves**, **Fact Sheet 8: Biodiversity conservation in Western Australia**, **Fact Sheet 9: Biodiversity conservation under Commonwealth law** and **Fact Sheet 19: Fishing**.

### What are "marine reserves"?

For the purpose of this fact sheet, marine reserves are marine or estuarine areas that have been set aside to protect an environmental value, such as a reef, breeding habitat or aquatic plant species. These reserves can be created under Commonwealth and State laws.

### What protection is given to marine reserves?

The rules that apply to different types of marine reserve vary depending on the statute under which they were created and the category of the particular reserve. Controls may include restrictions on mining, commercial and recreational fishing and aquaculture. This fact sheet will examine the three main types of marine reserve – Commonwealth marine reserves; State marine parks and reserves; and fish habitat protection areas.

### Commonwealth marine reserves

#### Over what waters can Commonwealth marine reserves be created?

Commonwealth marine reserves can be created over any waters in the "Commonwealth marine area" ("CMA"), namely, generally that area extending from three nautical miles from the coastal baseline to the 200 nautical mile exclusive economic zone.

The following Commonwealth marine reserves have been created off the Western Australian coast:

- Ningaloo (Commonwealth Waters) Marine Park;
- Mermaid Reef Marine National Nature Reserve;
- Ashmore Reef Marine National Nature Reserve; and
- Cartier Island Marine National Nature Reserve.

#### How are Commonwealth marine reserves created?

Commonwealth marine reserves are created by a proclamation of the Governor-General on the recommendation of the Commonwealth Environment Minister. A reserve may be amended, or revoked by proclamation, also. Before the reserve is made, amended, or revoked, the public must be given an opportunity to comment, a notice must be published with details of the reserve and any comments made must be included in a report to the Minister.

#### Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

A proclamation creating a reserve must (among other things) state the purpose of the reserve and assign one or more of the following IUCN (World Conservation Union) categories to the reserve:

- strict nature reserve;
- wilderness area;
- national park;
- natural monument;
- habitat/species management area;
- protected landscape/seascape; or
- managed resource protected area.

Before assigning an IUCN category, the Minister must be satisfied that the proposed reserve meets the criteria necessary to qualify for that particular category.

### How are Commonwealth marine reserves managed?

Commonwealth marine reserves are managed by the Director of National Parks within the Commonwealth Department of the Environment and Heritage. The Director must give effect to a management plan that is in operation for the reserve. Management plans are required to be put in place as soon as practicable after the reserve is created.

#### *Activities authorised under a management plan*

A person must not do any of the following things in a Commonwealth marine reserve except in accordance with the relevant management plan (save in wilderness areas where these acts are totally prohibited):

- kill, injure, take, trade, keep or move a member of a native species (including fish);
- damage heritage;
- carry out excavation works;
- erect a building or other structure;
- carry out works; or
- undertake commercial activities.

The penalty for undertaking any of these activities in contravention of a management plan is a civil fine of up to \$55,000 for an individual or \$550,000 for a company.

#### *Where there is no management plan*

Where there is no management plan in operation for a Commonwealth marine reserve, the Director of National Parks must manage the reserve in accordance with the IUCN principles applicable to the particular reserve or (where the reserve is held under lease) in accordance with the terms of the lease. Commonwealth agencies (which includes the defence forces) must also abide by the IUCN principles or lease conditions in exercising its functions in relation to a reserve.

Each of the four Commonwealth marine reserves off the Western Australian coast has a management plan.

### What limits on mineral exploration activities are there in a Commonwealth marine reserve?

#### *Mining*

Mining operations (including petroleum and gas extraction) in a Commonwealth marine reserve are limited to the extent that they:

- (a) require the Governor-General's prior approval; and
- (b) must be implemented according to the operative management plan.

#### *Commercial fishing*

Commercial fishing can only be undertaken in a marine reserve if it is permitted under the relevant management plan and is undertaken in accordance with any restrictions imposed by the Director of National Parks. Engaging in commercial fishing within a marine reserve when it is prohibited is an offence. The maximum penalty is a fine of \$5,500. Commercial fishing is prohibited within each of the Commonwealth marine reserves off Western Australia's coast.

### *Recreational fishing*

Like commercial fishing, recreational fishing can only be undertaken in a Commonwealth marine reserve if it is authorised under the terms of the relevant management plan. Where recreational fishing is permitted, it is subject to other restrictions. For example, a recreational fisher must not:

- (a) use equipment that allows the person to breathe under the surface of the water; or
- (b) use any fishing equipment other than a fishing rod, hand-held line or hand held net.

Taking fish in an illegal manner is an offence, and is subject to a maximum fine of \$3,300.

### *Other restrictions*

Numerous other restrictions apply to activities within Commonwealth marine reserves. These include restrictions on commercial activities, taking photographs for commercial purposes, and undertaking scientific research. For further information on controls that may apply, contact the Department of Environment and Heritage.



## State marine reserves

### **What are State marine reserves?**

Marine reserves in Western Australian waters can be created under the *Conservation and Land Management Act* 1984 and the *Land Administration Act* 1997. “Western Australian waters” means those waters on the landward side of a line drawn three nautical miles from the coastal baseline

### **What types of State marine reserve exist?**

There are three types of State marine reserve that can be created under Western Australian law: marine nature reserves, marine parks and marine management areas.

#### *Marine nature reserves*

A marine nature reserve offers the highest level of protection and is created for the preservation of the environment and for scientific research. The only marine nature reserve in Western Australia is the Hamelin Pool Marine Nature Reserve at Shark Bay which protects a stromatolite community (organisms that thrive in very saline water and are found in only two places in the world). Recreation use is permitted by day. There is a boardwalk from which to view the stromatolites.

#### *Marine parks*

Like marine nature reserves, marine parks are created to protect the environment but may also permit certain recreational and commercial uses that are consistent with the park’s conservation values. After a marine park has been created, the Minister for the Environment must assign one or more of the following categories to the park:

- A sanctuary zone, which is managed for nature conservation, and within which recreational activities and tourism operations consistent with maintaining environmental values are allowed, but more extractive activities, such as fishing, are not.
- A recreation zone, which is managed for conservation and recreation, and within which recreational fishing (subject to bag limits) is permitted, but commercial fishing and aquaculture are not.
- A special purpose zone, which is managed for a particular priority use or purpose, such as an important marine habitat or wildlife breeding area, or an activity such as whale watching; and/or
- A general use zone, which covers the remaining areas in marine parks, not classified as sanctuary, recreation or special purpose zones, and in which commercial activities are allowed.

There are currently nine marine parks in WA: Marmion; Ningaloo; Rowley Shoals; Shark Bay; Shoalwater Islands; the Swan Estuary; Jurien Bay, Montebello Islands and Barrow Island.

#### *Marine management areas*

Marine management areas (“MMAs”) are created to manage multiple uses where there are high conservation values and intensive use demands. Because conservation objectives do not have priority over other uses in management of MMAs, they are not considered to be marine reserves. There are currently two marine management areas in WA: Muiron Islands and Barrow Island.

## Who manages State marine reserves?

State marine reserves are vested in the Marine Parks and Reserves Authority (“MPRA”) and managed by the Department of Conservation and Land Management (“CALM”).

## How are State marine reserves created?

After the following steps have been followed, the Minister for the Environment may recommend to the Governor that the proposal be approved:

- advertisement for public comment, with the prior consent of the Ministers for Mines and Fisheries;
- notification of affected local governments;
- preparation of an indicative management plan by the MPRA generally with reference to marine reserve advisory committee established by the Minister;
- consultation with the Swan River Trust if the proposal is in the Swan River Trust Management Area;
- preparation of a report including details of all public submissions; and
- consent of the Ministers for Fisheries and Mines.

### *Class A marine reserves*

A marine reserve may receive “class A” protection at the time the reserve is created or subsequently by an Order of the Governor, with the Minister for Mines’ consent.

## Can a State marine reserve be altered or cancelled?

### *Class A marine reserves*

Class A marine reserves can only be altered or cancelled with the approval of both Houses of Parliament.

### *Non-class A marine reserves*

A non-class A marine reserve may be altered or cancelled by an Order of the Governor on the recommendation of the Minister for the Environment. Before the Governor can make such an order, the Minister for the Environment must:

- refer the proposal to the MPRA and (if the reserve is within the Swan River management area) the Swan River Trust for comment; and
- obtain the consent of the Ministers for Mines and Fisheries to the proposal.

## How are State marine reserves managed?

### *If there is a management plan in place*

Where a management plan is in place for State marine reserve, CALM must manage the reserve in accordance with that plan. Details of current management plans are available from the CALM website.

### *If there is no management plan in place*

Where there is no management plan, CALM must manage the reserve in accordance with the general principles set out in the *Conservation and Land Management Act* relevant to the classification of the reserve. These general controls are as follows:

### **Marine nature reserves**

If there is no management plan for a marine nature reserve, it must be managed to ensure that only “necessary operations” are undertaken. “Necessary operations” means operations that are necessary for the preservation or protection of persons, property, land, waters, flora or fauna, or for the preparation of a management plan.

### **Marine parks and marine management areas**

Where there is no management plan for a marine park or marine management area, it must be managed to ensure that only “compatible operations” are undertaken. “Compatible operations” means operations that are:

- necessary for the preservation or protection of persons, property, land, waters, flora or fauna, or for the preparation of a management plan; or
- approved by the Minister as being compatible with the purposes for which the reserve is managed.

Before the Minister can approve an operation within a marine park or marine nature reserve, the proposal must be advertised in: the *West Australian Government Gazette*; in two issues of a daily newspaper circulating throughout the State; and in two issues of a local newspaper circulating within the area in which the land is situated.

### What activities can be undertaken in a State marine reserve?

Controls on activities within a State marine reserve vary depending on the type of reserve and (in the case of marine parks) the classification of areas within that reserve.

If a person undertakes any activity in a marine reserve without lawful authority, the person may be charged with illegally taking flora or fauna (the maximum penalty for which is a fine of \$10,000) and may also face a range of other penalties relating to the interference or disturbance of the environment.

#### *Marine nature reserves and marine parks*

##### **Mining**

A mining lease or general purpose lease cannot be granted in any marine nature reserve or marine park without the consent of both Houses of Parliament. Other types of mining tenement (for example, an exploration licence) can be granted without Parliamentary approval, but no mining activities can be carried out without the written approval of the Mining Minister on the recommendation of the Minister for Conservation.

Where approval to mine is granted, the tenement holder must not interfere with the seabed of the marine nature reserve or an area within a marine park that is classified as a sanctuary area, recreation area or special purpose area.

##### **Petroleum drilling and production**

Exploratory drilling for and production of petroleum is not permitted in a marine nature reserve, nor within an area of a marine park which is classified as a sanctuary area, recreation area or petroleum exclusion zone. These restrictions do not apply to activities that were authorised prior to the establishment of the reserve or park.

##### **Commercial fishing**

Commercial fishing is prohibited in a marine nature reserve or within a sanctuary area, recreation area or commercial fishing exclusion zone in a marine park. These controls do not apply to commercial fishing activities that were approved prior to the establishment of the reserve or park (which in practice includes most commercial fishing activities).

##### **Recreational fishing**

Recreational fishing cannot be undertaken within a marine nature reserve, a sanctuary area or recreational fishing exclusion zone within a marine park. These controls do not apply to recreational fishing activities that were approved prior to the establishment of the reserve or park.

##### **Pearling and aquaculture**

Pearling and aquaculture ventures are prohibited in a marine nature reserve and within a sanctuary area, recreation area or pearling or aquaculture exclusion zone in a marine park. These controls do not apply to pearling and aquaculture projects that were approved prior to the establishment of the reserve or park.

#### *Marine management areas*

Unlike marine nature reserves and certain areas within marine parks, there are no restrictions on mining, petroleum, fishing, pearling or aquaculture activities within marine management areas.



## Fish habitat protection areas

### What is a “fish habitat protection area”?

A fish habitat protection area (FHPA) is an area of Western Australian waters set aside for any one or more of the following purposes:

- conservation and protection of fish, fish breeding areas, fish fossils or the aquatic eco-system;
- culture and propagation of fish and experimental purposes related to that culture and propagation; or
- management of fish and activities relating to the appreciation or observation of fish.

At the time of writing, FHPAs had been established at the Houtman Abrolhos Islands, Cottesloe Reef, Lancelin Island Lagoon and Miaboolya Beach. New areas are proposed for Ord River, the eastern Exmouth Gulf and parts of the Shark Bay World Heritage Area.

### How is a FHPA created?

Unlike marine reserves, a community group may initiate the FHPA process. A FHPA is established by the Minister for Fisheries, following advertisement of the proposal and receipt of public comment.

FHPAs cannot be created over an area which is already a CALM Act marine reserve, although a marine reserve may be declared over an existing FHPA (thereby repealing it).

### Can a FHPA be cancelled or amended?

The Minister for Fisheries may amend or cancel a FHPA by order, subject to advertising the proposal and inviting comments from the public.

### How are FHPA's managed?

FHPA's are generally administered by the Department of Fisheries, but can be vested in any body corporate. This may include an incorporated community group.

Plans of management must also be prepared before a FHPA is created. These plans may include strategies for management, but do not create offence provisions, although regulations created to enforce management plans may be created.

### What activities can be undertaken in a FHPA?

The creation of FHPAs does not affect any mineral or petroleum activities. Other activities (such as using boats or entering a FHPA) can be restricted under regulations. The regulations currently prohibit fishing (subject to some exceptions), jet skiing and anchoring a boat in the Cottesloe Reef and Lancelin Island FHPAs.



## Other controls

### Environmental impact assessment

If an activity is likely to have a significant impact on the marine environment, CMA, a threatened species or a World Heritage Area (such as Shark Bay), it may require environmental impact assessment under State and Commonwealth laws (see **Fact Sheet 5: Environmental impact assessment in Western Australia** and **Fact Sheet 6: Commonwealth environmental impact assessment**).

### Specific area controls

An Act of the State or Federal parliaments may create a statutory management regime for a specific area. For example there could be an Act of Parliament to specifically protect the Cape Range/Ningaloo ecosystem, such has been enacted for the Great Barrier Reef. A specific geographic area may also be set aside for management, for example the special controls applying to the Abrolhos Islands and Rottneest Island.

### Fishing restrictions

Areas of the marine environment can be closed to fishing under the Fish Resources Management Act. (see **Fact Sheet 19: Fishing**).

### Planning and local laws

Planning and local laws can protect marine environments, especially beaches, nearshore waters, the seabed, offshore reefs and islands vested in the adjacent local government for management. See for example:

- the Cottesloe Beach by laws, which have effect out to 200 metres from the low water mark; or
- town planning schemes which include in their scheme offshore reefs and islands opposite their marine boundaries like the islands of the Recherche Archipelago south of Esperance, which are included in the Esperance Town Planning Scheme, notwithstanding the fact these islands also comprise a CALM managed terrestrial nature reserve.

### Pollution and environmental harm

Activities that may pollute or otherwise cause environmental harm may be subject to control under a number of different statutes. See **Fact Sheet 20: Marine pollution**.

### Heritage protection

Protection of shipwrecks and other places of cultural heritage significance can be protected under a number of different laws. For further information, see **Fact Sheet 13: Heritage protection**.

## How can you become involved?

You can use the marine reserve system to assist in the protection of marine reserve system to assist in the protection of marine areas from environmental degradation by:

1. calling for the establishment of marine reserves and/or fishing restrictions over sensitive areas of the marine environment;
2. monitoring development proposals through local government that may impact on a marine park (see Fact Sheet 4: Development controls);
3. reporting potentially illegal conduct within marine reserves to the relevant management body (Federal Department of the Environment and Heritage, CALM or the Department of Fisheries);
4. liaising with the management body (eg. CALM) to ensure the reserve is being managed in accordance with its purpose;
5. encouraging CALM or the other relevant management body to develop management plans for reserves under its control; and
6. monitoring newspapers for proposals to change the boundaries or purposes of marine reserve

## Contacts and further information

**Department of the Environment & Heritage, Marine Protected Areas Section, Canberra** Tel: (02) 6274 1759 Website: <http://www.deh.gov.au/coasts/mpa/index.html>

**Department of Conservation & Land Management, Marine Branch, Fremantle**

Tel: (08) 9336 0100. For a list of current management plans (draft and final) go to:

[http://www.calm.wa.gov.au/national\\_parks/management/index.html](http://www.calm.wa.gov.au/national_parks/management/index.html)

For fishing restrictions in Ningaloo Marine Park and Muiron Islands Marine Management Area go to:

[http://www.naturebase.net/national\\_parks/marine/ningaloo/activities.html](http://www.naturebase.net/national_parks/marine/ningaloo/activities.html)

**Department of Fisheries, Perth**

Tel: (08) 9482 7333 Website: <http://www.fish.wa.gov.au/index.php>

**Department for Planning & Infrastructure, Land Asset Management Services Division, Midland**

Tel: (08) 9347 5000 Website: <http://www.dpi.wa.gov.au/las/reserves.html>

## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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***This fact sheet was produced with the assistance of:***

