



Marine Reserves

An Introduction to 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 and Ningaloo Reef World Heritage Areas, the Abrolhos Islands and Recherche Archipelago, plus important breeding areas for a range of threatened migratory species, such as the Southern Right Whale. Pressure on the marine environment is growing, through increased resource exploration and exploitation, tourism and development, pollution, and over exploitation of fish species.

Marine reserves are areas that have been specially classified under law to protect some environmental value within them, and usually restrict some activities in the area. Reserves can be made under Commonwealth or State laws (and in some cases, both). The level of protection in any particular marine area depends upon the law the reserve is created under, the category of reserve, and the zoning within the reserve.

This fact sheet will examine the main types of marine reserve in WA, how they are protected, and what activities can be carried out in them. It deals with Commonwealth marine reserves and conservation reserves, State marine nature reserves, marine parks and marine management areas, and State fish habitat protection areas.

What are “marine reserves”?

Marine reserves are marine or estuarine areas that have been specially set aside and classified under law to protect an environmental value. Once reserved, marine areas are subject to special protections and controls, which may include restrictions on activities such as oil and gas exploitation, commercial and recreational fishing or tourism.

Reserves can be made under Commonwealth or State laws (and in some cases, both). The level of protection within each marine reserve depends upon the law the reserve is created under, the category of the particular reserve, and the zoning within the reserve.

Commonwealth marine reserves

Commonwealth marine reserves can be created over any waters in the “Commonwealth marine area”, which is generally the area between 3 and 200 nautical miles off the coast.

Commonwealth marine reserves can also be created over state waters owned or leased by the Commonwealth (eg coastal waters used for defence purposes).

Commonwealth reserves protect all the waters, and the seabed, in the area which is reserved.

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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. Before the reserve is made, a notice must be published with details of the proposed reserve, the public must be given an opportunity to comment for at least 60 days, and a report about the reserve and any comments made must be given to and considered by the Minister. The report is prepared by the Director of National Parks within the Commonwealth Department of Sustainability, Environment, Water, Population and Communities ("SEWPaC").

What types of Commonwealth marine reserve are there?

A proclamation creating a Commonwealth reserve must state the purpose of the reserve and assign one or more of the following IUCN (International Union for Conservation of Nature) categories to each part of the reserve:

- strict nature reserve - managed primarily/only for scientific research or environmental monitoring;
- wilderness area - protected and managed to conserve its unmodified condition, with public access allowed only if it is consistent with maintaining wilderness qualities;
- national park - protected and managed to conserve its natural condition, with visitor use consistent with this for inspirational, educational, cultural and recreational purposes;
- natural monument – areas which have a specific outstanding natural feature which should be protected or conserved in perpetuity because of their natural significance, unique or representational quality, or spiritual connotations;
- habitat/species management area - managed primarily to ensure the maintenance of habitats or to meet the requirements of species;
- protected landscape/seascape – where there is a significant landscape or seascape; or
- managed resource protected area - managed mainly for the ecologically sustainable use of natural ecosystems.

How are Commonwealth marine reserves altered or revoked?

A reserve may be amended (ie its purpose or boundary changed) or revoked by proclamation of the Governor. However a proclamation which means that any marine area will no longer be the subject of any reserve type at all can only be made if the Minister for Environment is satisfied that both Houses of Parliament would pass a motion to this effect.

How are Commonwealth marine reserves managed?

Commonwealth marine reserves are managed by the Director of National Parks within SEWPaC ("the Director").

There are a number of general management principles which the Director must apply when managing all Commonwealth marine reserves, regardless of their category. These general principles are:

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- Community participation;
- Effective and adaptive management;
- The precautionary principle;
- Minimum impact - the integrity of a reserve or zone is best conserved by protecting it from disturbance and threatening processes;
- Ecologically sustainable use - natural resources should only be used within their capacity to sustain natural processes, and the benefit to the present generation should not diminish the potential of the reserve to meet the needs and aspirations of future generations;
- Transparency of decision making (including reasons for decision); and
- Joint management with or by Aboriginal people.

There are then also specific management principles which apply for each specific IUCN category. See the EPBC Regulations for a list of these.

In managing the reserve, the Director must also give effect to any management plan that is in operation for the reserve.

Commonwealth agencies (which includes the defence forces) have to abide by the IUCN principles and management principles in exercising any functions in relation to a reserve. However, the management principles and plans generally are not legally binding on third parties, except to the extent that they require third parties to obtain approval before carrying out some (usually commercial) activities.

Management plans

Management plans are required to be put in place as soon as practicable after the reserve is created. These plans generally specify how the area is to be managed to meet its conservation purposes, and what activities can be carried out in the reserve.

Management plans are drafted by the Director, and have to be open for public comment for at least 30 days. The final plan is then approved by the Minister.

Generally management plans permit activities which are consistent with the reservation purpose, but may require that prior approval be obtained for these activities. Management plans also usually specify that approval is required to take flora or fauna, to carry out any works or undertake any commercial activities.

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.

What activities are restricted in a Commonwealth marine reserve?

Any activity in a marine reserve may need to be assessed and approved under Commonwealth environmental impact assessment laws, see [Fact Sheet: Commonwealth environmental impact assessment](#) for more details. There are also general restrictions on some activities in Commonwealth marine reserves, as follows:

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Mining/petroleum exploitation

Exploration or exploitation of minerals or petroleum, or any activity connected with or incidental to these, are not permitted in a Commonwealth marine reserve unless they are permitted under a management plan or have a specific approval from the Director (which can only be issued if the person has a pre-existing right). If the activity is undertaken, it must be in accordance with any restrictions imposed by the Director.

Commercial fishing

Commercial fishing can only be undertaken in a Commonwealth marine reserve if it is permitted under the relevant management plan and is undertaken in accordance with any restrictions imposed by the Director.

Recreational 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 always subject to some restrictions such as that a recreational fisher must not:

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

Other activities

Many other restrictions also apply to activities within Commonwealth marine reserves. These include restrictions on commercial activities, taking photographs for commercial purposes, and undertaking scientific research.

Commonwealth conservation reserves - protection while an area is being assessed for suitability as a Commonwealth marine reserve

If the Minister is satisfied that a Commonwealth area should be assessed for inclusion in a Commonwealth reserve, he or she may declare the area to be a conservation zone. Many of the restrictions on activities which apply in Commonwealth marine reserves then apply within that area.

State marine reserves

Marine reserves can be made in Western Australia's marine waters, being those waters off WA's coast out to three nautical miles from the baseline (usually the low water mark of the mainland, but the baseline can also extend out to islands such as Rottnest Island and Barrow Island).

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. Any marine reserve can also be classified as a Class A marine reserve, which provides a greater level of protection (see below).

Marine nature reserves

Marine nature reserves offer the highest level of protection to WA marine areas and are created for the conservation, restoration and care of the environment, and for scientific research. Although low-impact tourism may be permitted, they are 'look but don't take' areas often referred to as 'no take' areas or marine sanctuaries.

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After a marine nature reserve is created, the Minister may (but does not have to) classify parts of the reserve into specific zones set aside for sanctuary, recreation, special purpose or general use (see below under "marine parks" for more information about these zones).

Marine parks

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. Marine parks are created to protect natural features and aesthetic values while allowing recreational and commercial uses that do not compromise conservation values.

After a marine park has been created, the Minister for the Environment must assign one or more of the following zones to the park (or parts of it):

- A sanctuary zone, which is managed for nature conservation. Recreational activities and tourism operations which are consistent with maintaining environmental values are allowed, but more extractive activities, such as fishing or petroleum exploration or extraction, are not.
- A recreation zone, which is managed for conservation and recreation. 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 reserves.

Marine management areas

Marine management areas are created to manage multiple uses where there are high conservation values and intensive use demands. Specifically, they are for the purpose of managing and protecting the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes. Commercial purposes includes aquaculture, commercial and recreational fishing, mining, and petroleum exploration and production.

After a marine management area is created, the Minister may (but does not have to) classify parts (or all) or the area into specific zones set aside for sanctuary, recreation, special purpose or general use (see above under marine parks for more information about these).

Who owns and manages State marine reserves?

State marine reserves are vested in the Marine Parks and Reserves Authority ("MPRA") and managed by the Department of Environment and Conservation ("DEC").

How are State marine reserves created?

Marine reserves are made by a declaration of the Minister for Lands which reserves the area for the public

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purpose of a marine reserve under the *Land Administration Act 1997*. The marine reserve is then protected and managed under the *Conservation and Land Management Act 1984*.

The following steps are involved in the creation of a marine reserve:

- the Ministers for Mines and Fisheries consent to the proposed reserve being advertised for public comment;
- details of the reserve proposal are advertised for public comment for at least 3 months. There must also be notification of affected local governments;
- preparation of a draft management plan by the MPRA;
- advice to the Minister for Environment from the MPRA; and
- consent to the reservation from the Ministers for Fisheries and Mines.

The reserve declaration then has to be laid before Parliament. If either House of Parliament passes a resolution disallowing the reserve, then the reserve does not have effect.

A marine reserve may be classified as “class A” at the time it is created or subsequently. This classification is made by an Order of the Governor with the consent of the Minister for Mines’ and provides the reserve with greater protection because it can only be altered or cancelled with the approval of both Houses of Parliament.

When declaring the zones inside a marine reserve, the Minister must usually seek the advice of the MPRA and give 2 months for public comment. The Minister does not have to do this in the case of urgency, but if he does not seek the advice of the MPRA, that decision has to be tabled in parliament. The Minister cannot declare the zones in a marine park or marine management area without the consent of the Ministers for Fisheries and Mines.

Can a State marine reserve be altered or cancelled?

A non-class A marine reserve may be altered or cancelled by the Minister for the Environment with the consent of both the Minister for Mines and the Minister for Fisheries.

If a marine reserve is classified as Class A, the reservation of the area can only be altered or cancelled with the approval of both Houses of Parliament.

How are State marine reserves managed?

The management of marine reserves depends upon whether there is a management plan in place. The CALM Act does not require management plans to be in place for conservation reserves at all times, instead they are required to be made as is reasonably practicable having regard to the resources of DEC. This means that some State marine reserves do not have a management plan in place, or only have an out-dated management plan.

The MPRA is responsible under the CALM Act for the preparation of draft management plans, through the agency of DEC. This means that the plans themselves are actually drafted by, and then implemented by, DEC, but the MPRA reviews the plans and has overall decision making power about them.

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Draft management plans have to be publicly advertised and open for public comment for at least 2 months. Draft plans also have to be sent to other relevant government and local governments for comment.

Once comments are received, the draft plan is finalised by the MPRA, and then sent to the Minister for Environment for approval. The Minister must be satisfied that the plan addresses any submissions from the Minister for Fisheries concerning aquaculture, commercial or recreational fishing or pearling activity, and any submissions from the Minister for Mines concerning mining or petroleum or geothermal energy related exploration or production activities. In approving the plan, the Minister can make changes to it.

Details of current management plans are available from the DEC website.

If there is a management plan in place

Once a management plan is in place for a marine reserve, DEC must manage the waters in accordance with that plan, however DEC usually have some discretion about how and when they carry out or allow specific activities.

If there is no management plan in place

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

Marine nature reserves 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, waters, flora or fauna, or for the preparation of a management plan.

Marine parks and marine management areas 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, 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 a compatible operation within a marine park or marine nature reserve, the proposed operation must be advertised.

What activities can be undertaken in a State marine 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 and may also commit a range of other offences relating to their use of vessels, or interference or disturbance of the environment.

The most significant controls on activities within a State marine nature reserve or marine park vary depending on the type of reserve and the classification of areas within that reserve. There are no specific controls on activities within marine management areas.

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 Minister for Mines on the recommendation of the Minister for Environment.

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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 exploration and production

Exploratory drilling for and production of petroleum is not permitted in a marine nature reserve or within an area within 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 activities which 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 which were approved prior to the establishment of the reserve or park.

Fish habitat protection areas

A fish habitat protection area ("FHPA") is an area of Western Australian waters set aside for fish protection under the *Fish Resources Management Act 1994 (WA)*. Areas which are marine reserves cannot be made into FHPAs, and if a marine reserve is declared over an FHPA area, the FHPA stops operating.

FHPAs can be made 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.

The creation of an FHPA in an area means that many activities are restricted under specific regulations for that FHPA. For example, regulations currently prohibit fishing (subject to some exceptions), jet skiing and anchoring a boat in the Cottesloe Reef and Lancelin Island FHPAs. The creation of FHPAs does not affect any mineral or petroleum activities.

FHPAs are established by the Minister for Fisheries, following advertisement of the proposed FHPA and public comment for at least 30 days. The Minister for Fisheries may also amend or cancel a FHPA, again subject to advertising the proposal and inviting comments from the public.

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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.

Management plans 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.

Contacts and further information

Commonwealth Department of Sustainability, Environment, Water, Population and Communities, Marine Protected Areas Section, Tel: (02) 6274 1111

Website: <http://www.environment.gov.au/coasts/mpa/index.html>

WA Department of Environment and Conservation, Marine Policy and Planning Branch Tel: (08) 9219 9115.

For a list of current management plans go to:

<http://www.dec.wa.gov.au/content/view/1416/1906/>

WA Marine Parks and Reserves Authority, Tel 9219 9117.

Website: <http://www.dec.wa.gov.au/content/section/22/1355/>

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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 and State Attorney-General's Departments.

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:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: edowa@edowa.org.au

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