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## CABINET COVER SHEET

1. **TITLE:** APPROVAL TO DRAFT THE MARINE PARKS BILL 2005
  2. **MINISTER:** Hon John Hill MP  
Minister for Environment and Conservation
  3. **PURPOSE:** To seek Cabinet approval for the preparation of a draft Bill establishing arrangements for the dedication, zoning and management of marine parks to provide for the long-term conservation and protection of representative samples of South Australia's marine environments.
  4. **IDENTIFY THE RELEVANT GOVERNMENT POLICY AND/OR SA'S STRATEGIC PLAN TARGET:**

The Government's election policies and the *Living Coast Strategy* (July 2004) provide for the protection of areas of outstanding ecological significance through the establishment of a system of multiple-use marine parks.

South Australia's Strategic Plan – *Creating Opportunity* (March 2004) recognised this commitment with the inclusion of Target 3.5 – *Create 19 MPAs by 2010*. The establishment of marine parks will also contribute to Objective 2 – *Improving Well Being*, as the long-term protection of the South Australian marine environment will promote healthy lifestyles for families and the community through clean, healthy seas and marine produce.
  5. **RESOURCES REQUIRED FOR IMPLEMENTATION:** The process of developing the Marine Parks Bill has been, and will continue to be, met from within approved DEH budget allocations (including public consultation activities) and through the contribution of in-kind input and support by relevant agencies.
- Treasury and Finance advised that a costing statement is not required for this submission.

6. **COMMUNITY AND ENVIRONMENTAL IMPACT:** There are no direct impacts on the community and the environment from preparing the draft Bill. However, enactment of the subsequent legislation will have impacts and these are briefly explored in the Cabinet submission.
- The development of marine parks requires a process for balancing interests of all users for the greater benefit of the community and for the long-term protection and sustainability of the marine environment. This is a key outcome to be delivered by this legislation.
- A detailed impact statement will be prepared following the public consultation on the draft Bill, as it may need to be amended to respond to community / industry issues.
7. **RISKS:** The development of this legislation and the subsequent system of marine parks is one of a number of Government initiatives designed to mitigate the risk of unsustainable development and use of South Australia's marine environment and to ensure benefits for future generations.
- To not proceed with the legislation would have significant consequences arising from erosion of support and goodwill from both community and commercial sectors. These sectors have lent support to the marine park concept, albeit tentatively as they have stated they need to see the legislation, and proposed displaced effort arrangements, before giving the concept full support.
8. **CONSULTATION:** The development of the drafting instructions has been progressed through the Marine Planning and Marine Protected Area Steering Committee. This committee was established as a cross-agency forum to discuss and resolve key issues relating to the establishment of marine plans and marine parks.
- A full list of all agencies consulted is provided in Attachment 4.
9. **COMMUNICATION STRATEGY:** Following drafting of the Bill, further advice will be provided to Cabinet regarding the commencement of two months public consultation. The public consultation period will be formally announced via a Ministerial media release.
10. **URGENCY:** Within normal timeframes.

**12. RECOMMENDATIONS:**

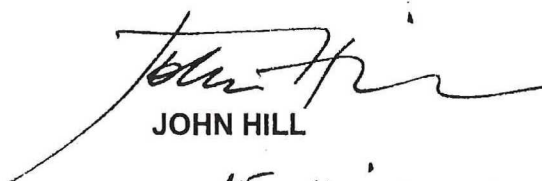
It is recommended that Cabinet:

- 4.1 approve the preparation of a draft Bill establishing arrangements for the dedication, zoning and management of marine parks to provide for long-term conservation and protection of representative samples of South Australia's marine environments;
- 4.2 approve forwarding the accompanying drafting instructions (Attachment 1) to Parliamentary Counsel for the preparation of the draft Bill; and
- 4.3 note that it is intended to undertake two months public consultation on the draft Bill and this will be the subject of further advice to Cabinet prior to the commencement of the consultation.

I declare that I have no actual or potential conflict of interest in relation to the proposals contained in this submission.

Signature of Minister:

Date:



**JOHN HILL**

15.11.05

Contact Officer: Denise Kean  
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TO: THE PREMIER FOR CABINET

RE: APPROVAL TO DRAFT THE MARINE PARKS BILL 2005

## 1. PROPOSAL

- 1.1 That Cabinet approve the preparation of a draft Bill establishing arrangements for the dedication, zoning and management of marine parks to provide for the long-term conservation and protection of representative samples of South Australia's marine environments.

## 2. BACKGROUND

### Commitments

- 2.1 With their high environmental, economic and social values, marine environments are significant resources to the community. However, with a large proportion of the population living near the coast and an increasing number of industries relying on marine resources, these environments are under significant pressure from development, use, pollution and other impacts.
- 2.2 In 1999, the Commonwealth Government and all State and Territory jurisdictions committed to the establishment of a National Representative System of Marine Protected Areas (NRSMPA) to protect and conserve representative samples of these environments for the benefit of current and future generations. This is a key action to support:
- the Inter-governmental Agreement on the Environment (1992);
  - the National Strategy for Ecologically Sustainable Development (1992);
  - the National Strategy for the Conservation of Australia's Biological Diversity (1996); and
  - Australia's Ocean Policy (1999).
- 2.3 A Marine Protected Area (MPA - also referred to as a 'marine park') can be defined as:
- An area of land and / or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means. (IUCN, 1994)*
- Or, put more simply, a marine park is an area of marine environment reserved by law to protect all, or part, of the enclosed environment.
- 2.4 The Government's election policies and the *Living Coast Strategy* (July 2004) provide for the protection of areas of outstanding ecological significance through the establishment of a system of multiple-use marine parks. This commitment delivers the State's obligation under the NRSMPA.
- 2.5 South Australia's Strategic Plan – *Creating Opportunity* (March 2004) also recognises this commitment with the inclusion of Target 3.5 – *Create 19 MPAs by 2010.*

- 2.6 It should be noted that South Australia is the only Australian jurisdiction that has yet to protect and conserve representative samples of marine environments under the NRSMPA.

#### Development of Marine Park Policy

- 2.7 On 6 December 2001, the former Premier and former Minister for Environment and Heritage announced details of an initiative to establish the South Australian Representative System of Marine Protected Areas (SARSMPA) and released the draft *Marine Protected Areas – A Shared Vision* document for community consultation.
- 2.8 A State-wide series of public meetings were undertaken in 2002 to promote the draft *Marine Protected Areas – A Shared Vision* document and seek community comment on the policy directions. These meetings reached some 1,600 people at 23 locations around the State from Ceduna to Port MacDonnell.
- 2.9 Comments from this consultation process indicated that local input was considered critical to the successful design and management of marine parks. Other key issues were the need for marine parks to be multiple-use and the incorporation of an effective mechanism to address any commercial fishing or aquaculture displaced from the dedication of a protected area.
- 2.10 On 28 November 2004, the Government formally released the *Blueprint for the South Australian Representative System of Marine Protected Areas* (herein the *Blueprint*), which proposes future directions for the planning and management of the State's system of marine parks. The *Blueprint* was influenced by comments received during the aforementioned consultation. Importantly, the *Blueprint* articulates the Government's commitments to:
- develop purpose-specific legislation for the dedication, zoning and management of multiple-use marine parks;
  - assess social and economic issues associated with marine parks;
  - ensure community participation in marine park development; and
  - develop a means to address any displaced effort.
- 2.11 The *Blueprint* received a positive response from both the conservation sector and the seafood industry, albeit there was some criticism of the extended timeframe for the dedication of the system of marine parks.

#### 'Pilot' Process of Marine Park Development

- 2.12 The former Government had also initiated a trial of the process for developing marine parks in the waters of Backstairs Passage, between the Fleurieu Peninsula and Kangaroo Island. The Government continued this Encounter 'pilot' process following the 2002 State election.
- 2.13 On 8 March 2005, the *Encounter Marine Park Draft Zoning Plan* was released for a three-month period of public consultation. During this time, officers from the Department for Environment and Heritage (DEH) actively engaged key stakeholders and the community. In particular, a series of public information sessions were conducted around the Fleurieu Peninsula, Kangaroo Island and metropolitan Adelaide to discuss the need to protect and conserve the marine environment as well as address community issues.

- 2.14 Members of the public were invited to make written *submissions* in relation to the draft zoning plan. Over 480 submissions were received, from which there was overwhelming support for the marine park concept and numerous suggestions to minimise impacts on existing activities and uses. DEH is currently analysing these submissions to identify opportunities to minimise potential social and / or economic impacts while still delivering the desired conservation outcome.
- 2.15 Stakeholders also advocated the need for certainty through a legislated process for the dedication, zoning and management of marine parks. Of particular concern to industry was the need for effective mechanisms to address any commercial fishing and aquaculture displaced through the establishment of a *marine park*.
- 2.16 While the *marine park concept* has enjoyed bipartisan support since its inception in 1999, the Opposition has voiced concerns that the Government is not delivering marine parks in the timeframe it originally established. Members of the Opposition have stated that the *Encounter Marine Park Draft Zoning Plan* should not have been developed until legislation (including displaced effort mechanisms) had been approved by Parliament.
- 2.17 It is important to note that the entire 'pilot' process, including feedback from the recent public consultation, has directly informed the development of the attached drafting instructions for the proposed Marine Parks Bill.
- 2.18 Without completing this 'pilot', the Government may have developed inadequate or inappropriate legislation that did not meet the needs of the broad range of stakeholders with an interest in the *marine environment*. The Government has announced that the *Encounter Marine Park* will not be dedicated until the Marine Parks Act has been proclaimed.

#### Related Policy Initiatives

- 2.19 The Government is also pursuing its election commitment to:
- '...review coastal and marine legislation and administrative structures in South Australia with a view to establishing a single, coastal and marine agency or board to assist with the integrated, multiple-use management of the coastal and marine environment...'*
- through the development of a Bill to amend the *Coast Protection Act 1972*.
- 2.20 Whilst this Bill may appear synonymous with the proposed Marine Parks Bill, they actually vary greatly. The Marine Parks Bill is needed to ensure that representative samples of the marine environment are protected for the benefit of current and future generations (similar to terrestrial based national parks). Whereas the Bill amending the *Coast Protection Act 1972* is needed to provide for the improved management and protection of all coast and marine environments in South Australia. It is envisaged that the amended coastal protection legislation will also provide a mechanism to give statutory effect to marine plans as components of broader coastal plans. Coastal plans would seek to guide ecosystem-based management to achieve ecologically sustainable development and use of both the coast and State waters.

### 3. DISCUSSION

#### Purpose-specific legislation

- 3.1 The Government has committed to the development of purpose-specific legislation for the dedication, zoning and management of marine parks. In particular, legislation is required:
- with clear objectives for the conservation and protection of biodiversity;
  - to provide a framework to dedicate marine parks with explicit recognition of the comprehensive, adequate and representative reserve system principles;
  - to provide for marine parks, or zones within marine parks, to be classified into one or more of the seven internationally recognised IUCN protected area management categories providing a range of levels of protection and use;
  - to ensure marine parks have secure status, which can only be revoked or altered by Parliamentary process;
  - to provide a multiple-use regime for the management of people and uses within marine parks; and
  - to address any displaced commercial fishing and aquaculture effort arising as a result of marine parks.
- 3.2 The purpose of Marine Parks legislation will be to protect and conserve marine biodiversity, including ecosystems and the plants and animals that depend on them. Put simply, the Marine Parks legislation will provide the necessary mechanisms to declare marine parks and establish zones that afford varying levels of protection for biodiversity through restricting access for certain activities and uses.
- 3.3 Importantly, the management and enforcement of activities in marine parks that are subject to other legislation (eg. development, fishing, aquaculture, mining etc.) will remain under their respective Acts. However, these activities will need to be undertaken and managed in a manner consistent with, and seek to further, the Objects of the Marine Parks Act.

#### Consideration of existing legislation

- 3.4 Consideration has been given to using existing legislation, particularly the *National Parks and Wildlife Act 1972* and the *Fisheries Act 1982*, to achieve the desired outcome. Neither of these Acts in their current forms, however, are likely to be acceptable to either commercial users or the conservation movement as the long-term basis for a system of marine parks. Issues associated with these Acts are outlined briefly below.

#### *National Parks and Wildlife Act 1972*

- 3.5 The primary purpose of the *National Parks and Wildlife Act 1972* is to provide for the establishment and management of reserves for public benefit and enjoyment and for the conservation of wildlife.
- 3.6 The *National Parks and Wildlife Act 1972* does not provide the desired level of flexibility to accommodate multiple-use and zoning issues. Given these issues, and the vast differences between terrestrial and marine environments, this Act was considered unsuitable for the establishment and long-term management of South Australia's marine parks system.

*Fisheries Act 1982*

- 3.7 The *Fisheries Act 1982* is single sector legislation with objectives clearly directed towards sustainable fisheries management in the first instance, with the protection of marine mammals and aquatic habitat undertaken in the context of optimising the utilisation of marine resources.
- 3.8 As the primary aim of marine parks is biodiversity conservation, and not fisheries management, the *Fisheries Act 1982* is not considered to be a suitable mechanism to deliver the required outcome.

## Drafting Instructions for the proposed Marine Parks Act

- 3.9 Following is an overview of the key components of the drafting instructions.

## Objects

- 3.10 The Objects highlight the key purpose of the Act, which are:
- 3.10.1 to provide a framework to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and
- 3.10.2 where consistent with the preceding object, provide for ecologically sustainable development and use (including commercial and recreational activities) as well as opportunities for public appreciation, education, understanding and enjoyment of marine environments.
- 3.11 In this regard, 'ecologically sustainable development' is to be defined in a manner complementary to that in the *Natural Resources Management Act 2004*.

## Responsible Minister

- 3.12 The drafting instructions provide that the Minister responsible for the administration of the Marine Parks Act should be the same as the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*. The intent behind this requirement is to ensure consistent and complementary decisions regarding the protection and conservation of both marine and terrestrial environments are achieved and to allow for operational and administrative efficiency.
- 3.13 The drafting instructions also seek to preclude the Ministers responsible for the *Fisheries Act 1982*, *Aquaculture Act 2001*, *Development Act 1993*, *Mining Act 1971* or *Petroleum Act 2000* from the administration of the Marine Parks Act to avoid potential conflicts of interest. This is particularly important to reassure the community that marine parks are primarily for biodiversity conservation and not extractive resource management or development control purposes.

## Native Title

- 3.14 

Clause 10(1) Legal Professional Privilege
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- 3.15 Section 211 of the *Native Title Act 1993* (preservation of certain native title rights and interests) will apply to all zones within a marine park (refer paragraph 3.28), with the exception of the proposed Restricted Access Zone, as it provides a complete prohibition on any person entering a zone (except under strict circumstances).
- 3.16 As Cabinet would be aware, the State is in the process of negotiating Indigenous Land Use Agreements (ILUAs), which amongst other things, will agree the content and regulate the exercise of native title rights to fish. This will occur in management plans to be implemented under the proposed Fisheries Management Bill 2005.
- 3.17 The Marine Parks legislation will establish arrangements complementary to the ILUA process and Fisheries Management Bill through the provision of Indigenous Cultural Fishing within the Activities and Uses permitted within a marine park.
- 3.18 In addition, all sections of the proposed Marine Parks Act referring to consultation with the community, will be drafted to specify consultation with all signatories of an ILUA covering the area of a proposed marine park, and where no ILUA exists, any native title claimants / Indigenous communities.

#### Defining Marine Park Boundaries / Revocation or Amendment of Boundaries

- 3.19 It is proposed to have the Governor declare a boundary and assign a name to each marine park in a proclamation that will be published in the Government Gazette.
- 3.20 As a principle, the marine park boundary shall extend to the nearest land-based cadastre (in most cases this should be the medium high-water mark as determined by the Surveyor-General). Notwithstanding this, flexibility is being sought to enable the marine park boundary to terminate at either highest or lowest astronomical tide or other defined cadastre boundary in certain circumstances.
- 3.21 This would enable parcels of Crown land, or other Government held land, to be incorporated into a marine park if its inclusion would further the Objects of the Marine Parks Act (such as protection of habitat for migratory wader birds / sensitive coastal dunes etc.). This provision would also enable Crown Land / leasehold land to be excluded from a marine park (eg. islands afforded higher levels of biodiversity protection under other legislation).
- 3.22 The seaward extent of a marine park boundary may not go beyond the limit of State waters (three nautical miles from the territorial sea base line) and will be defined by its longitudinal / latitudinal coordinates in Geocentric Datum of Australia 1994 (GDA 94). This will enable the boundaries of marine parks to be loaded into Global Positioning Systems (GPS) for ease of reference and navigation.
- 3.23 The drafting instructions state that the Governor should only make the revocation of, or amendment to, a marine park boundary in pursuance of a resolution passed by both Houses of Parliament. This delivers national commitments to ensure that marine parks have secure status that may only be revoked by Parliamentary process.

### Interim Management Arrangements for Declared (Un-zoned) Marine Parks

- 3.24 Following the dedication of a marine park boundary, there will be an interim period when the necessary zoning arrangements (refer paragraphs 3.32 – 3.41) will be developed in consultation with key stakeholders and the broader community. During this interim period a number of actions and/or impacts could occur that may compromise the delivery of biodiversity conservation outcomes, and in turn, expose the Government to criticism for not adequately managing areas it has identified worthy of protection.
- 3.25 Accordingly, it is considered prudent that the Marine Parks Act provide the ability to specify interim management arrangements that are warranted for the orderly and proper management of an un-zoned marine park at the time of declaring its boundary. This is consistent with the precautionary principle as set out in the Inter-governmental Agreement on the Environment (1992).

[Precautionary principle: where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.]

- 3.26 Any such interim management arrangements will be considered on a case-by-case basis depending on the ecosystems, habitats and biodiversity warranting protection and existing management arrangements for activities and uses in the area. Any such interim management arrangements will be presented as part of the Cabinet submission seeking approval of a marine park boundary.

### Zoning of Marine Parks

- 3.27 South Australia's marine parks will be zoned to allow for multiple-use in order to protect marine ecosystems while also providing for continued ecologically sustainable use of suitable areas. This means that most commercial and recreational activities will still be allowed within a marine park. There will, however, be particular zones or periods of time, where some activities will not be permitted. These restrictions are necessary to protect significant habitats, species, and geological, ecological or cultural features.
- 3.28 The zoning within a marine park will be developed based on scientific analysis of the environment, overlaid with social and economic considerations. The following zones will be used for this purpose:
- 3.28.1 *Restricted Access* – to provide protection and conservation for unique and biologically significant habitats within a marine park, by restricting access and prohibiting the removal or harm of plants, animals or marine products. These are generally the smallest component of a marine park.
- 3.28.2 *Sanctuary* – to provide protection and conservation for habitats and biodiversity within a marine park, where the removal or harm of plants or animals is prohibited.
- 3.28.3 *Habitat Protection* – to provide protection to species and habitats within a marine park, whilst allowing activities and uses that do not harm habitats or the functioning of ecosystems.

- 3.28.4 *General Managed Use* – to provide protection for species and habitats within a marine park, whilst allowing ecologically sustainable use.
- 3.29 *Special Purpose Areas* may also be established to provide for specific activities or uses within a marine park. These are to be considered as an overlay to the aforementioned zones and provide the Government with flexible management arrangements for specific purposes (such as providing for non-conforming uses) within a marine park.
- 3.30 All zone boundaries will be identified in a user-friendly format, including GDA-94 coordinates, with the majority of boundaries generally following straight lines (ie. north / south, east / west). Marker buoys may be used in some protected inshore areas to indicate zone boundaries and signage will be used at major access points (eg. boat ramps) as well as potentially along beach areas. Where possible, zone boundaries will use distinct visible landmarks to aid users on the water and shore. Information will also be freely available on a Government website and through departmental publications.
- 3.31 Importantly, zoning arrangements will not override international laws of the sea and any activity in emergency situations to preserve life or vessels will not be affected.

#### Development and Amendment of Zoning Arrangements

- 3.32 The Government has previously indicated the marine park system would commence with the Encounter Marine Park, followed by other locations in central and western South Australia and finally along the southern coast.
- 3.33 In order to deliver the 19 marine parks by 2010, it will be necessary to develop zoning arrangements for marine parks in a staged approach, concentrating on one or more parks within a defined area. However, the economic, social and environmental issues for each park within the area could vary, which may result in some zoning arrangements being finalised before others.
- 3.34 Given this situation, the drafting instructions provide that zoning arrangements are to be developed as soon as practical rather than within a specified period of time following the dedication of a marine park boundary.
- 3.35 The drafting instructions provide that the Minister will issue a notice advising the commencement of developing zoning arrangements. This notice will be placed on a Government website and in both the Government Gazette and a newspaper circulating through most of the State.
- 3.36 The notice will also invite any member of the community to provide any economic, social or environmental information that they wish to have considered during the development of draft zoning arrangements for a marine park. Direct contact will also be made with respective Indigenous communities and/or signatories to an ILUA. These requirements address community and key stakeholder group comments from the recent *Encounter Marine Park Draft Zoning Plan* public consultation process.

- 3.37 The drafting instructions also facilitate consultation with any statutory, non-statutory, community and/or public group or individual at any time during the development of zoning arrangements. This approach enables the Government to establish short-term non-statutory Consultative Committees, with an expertise-based membership to be drawn from local communities, to assist in the development of zoning plans, and also provides for targeted consultation to occur as necessary.
- 3.38 Notwithstanding the above, the proposed drafting instructions also provide for a mandatory public consultation process for either the development or amendment of zoning arrangements. This is a key issue that both the community and stakeholders are seeking certainty on as part of this legislation.
- 3.39 In particular, the drafting instructions state that the public consultation period should be no less than 28 calendar days. It is the Government's intention that a full three-month public consultation period will be undertaken for any new zoning arrangement or significant amendment to existing zoning arrangements.
- 3.40 However, it is likely that minor modifications may be necessary in the future and flexibility should be available to undertake a shorter consultation period, rather than be constrained to an overly burdensome process if a longer period was stipulated. This will need to be clearly articulated in the explanatory paper that will accompany the draft Bill during the proposed public consultation.
- 3.41 The final zoning arrangements for a marine park are proposed to form a separate regulation subordinate to the Marine Parks Act. This will avoid the need to later amend the Act in order to make any necessary future amendments to zoning arrangements but will still be subject to Parliamentary review through the Legislative Review Committee.

#### Community Nominations

- 3.42 The *Blueprint* articulates the Government's commitment to establish a process to consider community nominations for future marine parks. The *Wilderness Protection Act 1992* also contains provisions for the consideration of community requests to establish protected areas. However, the *Wilderness Protection Act* provides little direction for the management of these requests and as such has created a less than ideal framework for both Government and the community.
- 3.43 The Government's primary focus needs to be on establishing the 19 identified marine parks to meet South Australia's Strategic Plan target and ensure a comprehensive, adequate and representative system is established. As such, the immediate consideration of community nominations from all around the State has the potential to divert resources and jeopardise the delivery of the Government's commitments. In addition, if this process is not adequately managed the community may become disillusioned if the Government does not consider nominations in a reasonable timeframe.

- 3.44 The drafting instructions provide for a process whereby the Minister may call for community nominations for areas to be considered as marine parks for all, or part of, State waters. In practice, it may be advantageous to manage community nominations region by region in parallel with the development of zoning arrangements for representative marine parks. This approach would optimise the use of DEH resources when considering areas, as well as enabling locally based consultative committees and other stakeholders to consider potential impacts collectively rather than via a piece-meal approach.

#### Activities and Uses within a Marine Park

- 3.45 The drafting instructions include a head of power to provide for the making of a regulation, which specifies activities and uses that are to be permitted, prohibited or otherwise regulated within each of the marine park zones described in paragraph 3.28.
- 3.46 This regulation will apply to all representative marine parks established in South Australia to ensure consistent management arrangements. This is important from both an educational and enforcement perspective to ensure that the community understands that restrictions within zones in one marine park are exactly the same as those in other marine parks around the State.
- 3.47 A list of permitted activities and uses within each zone was included as part of the recent public consultation process and a number of suggestions to amend this list have been received. These suggestions, and the recognition of Indigenous Cultural Fishing as a specific sector, are currently being considered by DEH in conjunction with relevant management agencies.
- 3.48 Whilst any restrictions will be implemented through a subsequent subordinate regulation, it is expected that the community, key stakeholders and the Parliament will wish to consider them as part of the consultation and deliberations on the draft Bill. As such, the proposed restrictions on activities and uses (including any changes resulting from the recent public consultation process) will be articulated in the explanatory paper accompanying the draft Bill, which will be presented to Cabinet before public consultation commences.
- 3.49 As mentioned above, the proposed Marine Parks Act will not seek to assume or duplicate any existing management arrangements that currently occur under another statute (eg. development, aquaculture, fishing, mining, national parks etc). However, these management arrangements will need to be applied in a manner consistent with, and seek to further, the Objects of the Marine Parks Act when occurring within a declared marine park.

#### Development, Amendment and Revocation of Management Plans

- 3.50 Management plans are designed to direct the day-to-day management of natural and cultural heritage values, the use of particular areas, or the conservation of species or ecosystems within a park, or part of a park. These plans also outline the actions the Minister proposes to undertake to attain the Objects of the Marine Parks Act. These matters may vary between marine parks and are at a level where they do not need to be included in regulations. Issues to be covered by management plans include permitting arrangements, scientific monitoring regimes, interpretative signage, and other DEH management activities.

- 3.51 Importantly, a management plan for a marine park must be consistent with any zoning / activity and use provision established in regulations, and should be consistent (as far as practicable) with key other State policies and plans (eg. Planning Strategy, Natural Resources Management (NRM) Plans and South Australia's Strategic Plan).
- 3.52 The drafting instructions outline a similar set of arrangements for the development and amendment of a management plan to those for the development and amendment of zoning arrangements (viz issue of public notice, direct contact with relevant Indigenous communities, seeking of views of any appropriate party, mandatory public consultation and consideration of community submissions etc).
- 3.53 A requirement for a statutory review of management plans within ten (10) years of publication is proposed. This timeframe is considered a maximum limit and more regular revisions are expected to coincide with reviews of NRM Plans, management requirements (such as monitoring) and in response to emerging issues. Consideration has been given to a shorter mandatory review period, however, this could result in an unnecessary administrative burden in respect to some marine parks.

#### Marine Park Closures

- 3.54 Marine Park Closures are designed to provide the Minister with the ability to close public access to a marine park, or part thereof, for up to 90 days in response to an unforeseen or unplanned circumstance(s), including but not limited to:
- threat or imminent threat of harm to one or more species of plant or animal or a significant geographical feature;
  - natural disaster or emergency situation requiring immediate management action;
  - discovery of previously undescribed plants and / or animals;
  - identification of previously undescribed natural or cultural heritage;
  - public safety; or
  - to further the Objects of the Marine Parks Act.
- 3.55 The drafting instructions provide for a strict notification protocol and enable a Marine Park Closure to only be extended once for a further 90 days following the initial notification. If a longer period is required to further the Objects of the Marine Park Act or to protect human life, this extension must be established through a subordinate regulation.
- 3.56 A person whose interests are negatively affected by a Marine Park Closure may seek redress from the Government for losses suffered as a direct result of the closure. Any such redress would be managed in accordance with the principles provided for under the displaced effort provisions of the Act (with appropriate modification given the temporary nature of the impact).

#### Displaced Commercial Fishing and Aquaculture Effort

- 3.57 The creation of marine parks in South Australia will result in some areas with outstanding marine conservation values being designated as either Restricted Access or Sanctuary Zones to provide the required strict protection. These zones will preclude all commercial fishing, recreational fishing and aquaculture activities, unless otherwise stated. In addition,

sensitive habitat areas will be included in Habitat Protection Zones, which will preclude certain commercial fishing and aquaculture activities.

- 3.58 One of the main concerns of the commercial fishing and aquaculture industries is that the creation of *marine parks* will threaten the market value of existing licences and leases by introducing uncertainty into the industry in relation to access to State waters for wild harvest or farming purposes.
- 3.59 The *Blueprint* explicitly states '*...a means to address displaced commercial fishing effort will be developed as part of purpose-specific legislation for the dedication and management of marine parks for those instances where unavoidable conflict occurs*'.
- 3.60 DEH, in conjunction with the Department of Primary Industries and Resources South Australia (PIRSA) Aquaculture and Fisheries, has developed a draft displaced effort policy and mechanisms to address the impacts of displacement for both the aquaculture and commercial fishing industries. The fundamental tenement of the policy is that the Government will:
- work with industry to review zoning arrangements to determine if locations can be identified to deliver the desired conservation outcomes without displacing existing operations;
  - work with industry to determine if relocation is viable (in certain circumstances); and
  - as a last resort option, buy-out of any displaced effort (using a market-based approach).
- 3.61 Importantly, mechanisms to address the effect of displaced effort will only be enacted once final zoning arrangements for a marine park have been prepared and the associated level of displaced effort determined. This should minimise unnecessary angst as draft zoning arrangements are subject to public consultation and hence change.
- 3.62 An independent review process, with further appeal to the Environment, Resources and Development (ERD) Court, is also proposed for affected fishers / aquaculture developers dissatisfied with the outcome of the displaced effort mechanisms.
- 3.63 A copy of an *Industry Engagement Paper* outlining the Government's proposed displaced effort mechanisms is provided as Attachment 3. Consultation on these mechanisms is currently underway with key representative organisations to identify any industry-based issues with the proposal. Initial feedback is that the industry welcomed the opportunity to provide input to their development and is supportive of the Government's proposed policy and displacement mechanisms.
- 3.64 The drafting instructions provide the necessary head powers to deliver the aforementioned commitments, with the details of the mechanisms to be articulated in subordinate regulations (refer Attachment 2). It should be noted that this outcome accords with the recommendations of the Environment, Resources and Development Committee's Inquiry into MPAs (September 2005).

- 3.65 Given that much of the detail that will be of interest to industry and the Parliament will be included in regulations, the outcome of the aforementioned discussions and the content of the *Industry Engagement Paper* will be incorporated into the explanatory paper to accompany the draft Bill for public consultation.
- 3.66 While the Marine Parks Act will be committed to the Minister responsible for the *National Parks and Wildlife Act 1972*, currently the Minister for Environment and Conservation, the administration of measures to address the effects of displaced effort resulting from marine parks will need to be supported by the Minister for Agriculture, Food and Fisheries and PIRSA as the department with the expertise in, and responsibilities for, fisheries and aquaculture management.
- 3.67 A need to compensate recreational anglers for any potential loss of access has not been identified, as this does not represent a direct economic loss. Rather, the Government will work with recreational anglers and relevant associations to ensure adequate in-shore and beach fishing opportunities are maintained. There is also no intention to restrict any recreational fishing from existing public jetties in South Australia.

#### Authorisations

- 3.68 The responsible Minister needs the capacity to issue authorisations, primarily in the form of a licence or permit, for activities where there is currently no regulatory regime in place (eg. tourism operations, research programs, organised events) or where requirements are broader than the scope of other legislation. This is complementary with existing provisions for the management of such activities under the *National Parks and Wildlife Act 1972*.
- 3.69 The drafting instructions articulate the process for the issuing and management of authorisations, including the establishment and collection of prescribed fees.

#### Activities Authorised Under Other Legislation

- 3.70 The Marine Parks Act is not intending to introduce multiple authorisations / licences as it recognises the role and capacity of other legislation (such as the *Development Act 1993*, *Fisheries Act 1982* and *Aquaculture Act 2001*) to deliver these outcomes.
- 3.71 However, it is proposed that once the Marine Parks Act is in place, all new authorisations, or renewals of existing authorisations, issued under other legislation, for operations within a marine park, include necessary conditions to further the Objects of the Marine Parks Act.

#### Authorised Officers

- 3.72 The drafting instructions provide for the appointment of authorised officers to undertake necessary functions to implement and enforce requirements of the Marine Parks Act, zoning arrangements and management plans.
- 3.73 It is proposed that these officers be conferred with powers similar to authorised officers appointed under the *National Parks and Wildlife Act 1972*

and the powers provided for under the Fisheries Management Bill 2005 to ensure consistency of application.

- 3.74 Provision has been included for the Minister, with the concurrence of a Local Government Council, to appoint an officer or employee of the Council to be an authorised officer under the proposed Marine Parks Act. This provides sufficient flexibility for Local Councils to play a key role in the management of marine parks if they so desire.

#### General Duty of Care for Marine Parks

- 3.75 A general duty of care is to be established that requires a person to take all reasonable measures to prevent or minimise any harm to a marine park through his or her actions or activities.
- 3.76 A contravention of the general duty itself will not constitute an offence but may be enforced through the issuing of an enforcement notice or through obtaining an order from the ERD Court.

#### Offences

- 3.77 The drafting instructions seek to establish offences for undertaking any activities contrary to:
- interim management arrangements;
  - zoning arrangements and activities and uses;
  - management plan requirements;
  - marine park closures; or
  - the conditions applying to an authorisation.
- 3.78 Offences will also be created for undertaking a prescribed activity without authorisation, or undertaking a prohibited activity, in a marine park.
- 3.79 These offences will be consistent in character and their level of penalties to other similar legislation, most notably the *National Parks and Wildlife Act 1972* and Fisheries Management Bill 2005. In most instances, an authorised officer will be able to issue an expiation notice if it appears that a person has committed an offence against the Marine Parks Act or regulations.

#### Enforcement Notices and Related Matters

- 3.80 Apart from the ability to actually prosecute or expiate the above offences, the Minister or authorised officers will be empowered to issue either a protection or reparation order where he or she has reason to believe on reasonable grounds that a person has breached, or may breach, the Act. A person issued with such a notice will be able to appeal against it to the ERD Court.

#### Civil Enforcement

- 3.81 It is proposed that the Marine Parks Act include a provision for the Minister to apply to the ERD Court for an order to remedy or restrain a contravention of the Act. A number of powers are proposed for the ERD Court that correspond to existing powers under the *Native Vegetation Act 1991*.

### Transitional Arrangements

- 3.82 The Marine Parks Act should contain transitional arrangements to acknowledge that any boundary development, preparation of zoning arrangements and associated public consultation activities undertaken in accordance with the processes outlined in the drafting instructions, or equivalent, are recognised following proclamation of the Act.

### Other Legislation to be Amended

- 3.83 Amendments to related operational Acts are also proposed in the drafting instructions. The proposed amendments are to ensure that various statutory instruments under these Acts have regard to Objects of the Marine Parks Act and various activities and uses are managed in accordance with zoning arrangements under the Act.
- 3.84 In particular, the drafting instructions require that any subordinate legislation, strategy, plan, policy or guideline under a related operational Act prepared or amended after commencement of these amendments should be consistent with zoning arrangements for marine parks.

### 3.85 Economic, Financial and Budget Impacts

#### 3.85.1 Required Resources

The process of developing the Marine Parks Bill has been, and will continue to be, met from within approved DEH budget allocations (including public consultation activities) and through the contribution of in-kind input and support by relevant agencies.

As stated previously, the dedication of each marine park, including the associated zoning and other management arrangements, is subject to Cabinet approval and as such displaced effort and other resourcing matters will be considered as part of both the Budget and Cabinet processes on a case-by-case basis.

#### 3.85.2 Staffing Implications

Staff required to develop the attached drafting instructions, provide assistance to Parliamentary Counsel in the preparation of the draft Marine Parks Bill and to carry out subsequent public consultation will be met from within existing staffing levels.

An implementation group of 4.5 contract staff has been established to support one permanent DEH funded staff member in developing marine parks and the associated zoning and other management arrangements. Contract staff levels for development of marine parks would increase if additional resources were available to accelerate implementation.

### 3.86 Impact on the community and the environment

The development of marine parks requires a process for balancing interests of all users for the greater benefit of the community and for the long-term protection and sustainability of the marine environment. This is a key outcome to be delivered by this legislation, which is being guided by national guidelines, interstate experiences and accepted practices for marine parks.

There are no direct impacts from drafting the Marine Parks Bill for public consultation. However, enactment of the subsequent legislation will have impacts and these are briefly explored in the various impact statements below. A detailed impact statement will be prepared following the public consultation on the draft Bill, as amendments to key sections (such as Activities and Uses) may be needed to respond to community / industry issues. This impact statement will be presented to Cabinet when approval is sought to introduce the Marine Parks Bill into Parliament.

It is expected that any direct impacts associated with this initiative will result from the development of zoning and other management arrangements for individual marine parks. Full evaluation of the net benefit from a community perspective can only be done on a case-by-case basis once the zoning arrangements for a marine park have been developed. The significance and evaluation of the key impacts (ecological outcomes and productivity impacts in key commercial sectors) will also require a range of specific data and stakeholder input to quantify both positive and negative impacts for the particular area.

As such, a full assessment of these impacts will be presented to Cabinet on a case-by-case basis as part of the submission seeking approval these zoning arrangements. These impacts will also be communicated to the public through a formal Regional Impact Assessment Statement (RIAS).

From the studies that have been carried out overseas, marine parks appear to result in an overall positive outcome, having high benefit-cost ratios (approaching 10 to 1) and, generally, marine parks are economically beneficial when direct and indirect costs and benefits relating to all values are considered. (Source: Economic impact analysis for the Virgin Island National Park Island Resources Foundation & Functions and Socio Economic values of coastal/ marine protected areas.)

### 3.86.1 Regulatory impact

The effective management of activities (including recreational, commercial, educational and scientific) in marine parks is the key strategy to specifically achieve the objective of conserving marine biodiversity. The use of non-legislative means and self-regulation would be impractical in the management of marine parks. The areas need to be defined legally to enforce limitations on exploitation/use, as with other Government protected areas.

The zoning arrangements proposed under the Marine Parks Bill are output-driven in terms of ecological and biodiversity objectives but also rely on the prescription of the type of activities which are allowed (with or without consent) or which are prohibited in respective zones.

It should be noted that the regulation of many activities within marine parks will continue to be managed under the appropriate existing statute (viz mining, fisheries, aquaculture and development).

There should be no further regulatory impact on other activities that are not subject to separate statutes than is currently experienced through the existing *National Parks and Wildlife Act 1972*. In particular, arrangements for permits to undertake activities that are not managed under other legislation (eg. commercial photography, competitions, tourism and charter hire) are directly comparable to authorisations currently operating under the *National Parks and Wildlife Act 1972*.

The legislation will restrict some access to the marine environment for all users through the application of Restricted Access Zones. These zones are generally the smallest component of marine parks (<0.1 per cent of the draft Encounter Marine Park).

Sanctuary zones will also preclude activities such as recreational and commercial fishing, new developments (including aquaculture) as well as mining exploration and/or production. Economic impacts will be minimised through pragmatic zoning arrangements. The displaced effort provisions of the legislation should alleviate any unwarranted impact on adjacent marine ecosystems or the commercial fishing and aquaculture industries. Any payment for displaced effort will only be enacted where other avenues such as negotiation have been unsuccessful.

#### 3.86.2 Small business impact

The Marine Parks legislation will provide greater certainty for extractive industries and other marine resource users by clearly identifying where their activities may be undertaken within each marine park, however, this is offset by the potential loss of some extractive resource access (this impact to be minimised through the development of pragmatic zoning arrangements).

International experience has demonstrated that marine parks have the potential to increase harvests in a fishery over time in two ways. Firstly, through the emigration (or spill over) of large fish from protected areas in to surrounding waters, and secondly, through the export of larvae which may enhance regional fishery stocks. The results on this matter may vary from marine park to marine park.

There are potential short-term impacts and losses associated with the displacement of fishing effort. The proposed Marine Parks legislation provides surety for commercial fishing and aquaculture operations that may be adversely affected by marine parks, through the regulation of, and access to, displaced effort arrangements. Notwithstanding this, these impacts will be minimised through the development of pragmatic zoning arrangements.

Additionally, marine parks with their high conservation status also provide opportunities for many types of recreational and tourism activities that rely on a healthy and well managed marine environment. These are probably the most important small business / economic benefits of marine parks, which may be offset

by some potential impacts on recreational fishing and boating businesses.

### 3.86.3 Impact on the environment

The Objects of the proposed Marine Parks Act aim to conserve marine biological diversity, this includes:

- protecting unique and critical habitats and ecosystems;
- conserving representative biodiversity;
- protecting areas of high conservation value, including those containing high species diversity and centres of endemism;
- protecting biologically productive areas;
- protecting areas for the special needs of rare, threatened or depleted species, populations and communities;
- protecting cultural heritage and geological sites;
- conserving special groups of organisms (such as migratory birds and whales);

Research has shown that marine parks can have positive effects on the ecosystems and species under protection and may also have other benefits including:

- improving fisheries stocks through the protection of habitats critical for commercially and recreationally important species;
- dispersing larval recruits and genetic diversity to surrounding areas;
- providing sites for education;
- increasing community awareness and understanding; and
- providing scientific reference sites for research and long-term monitoring.

Educating students and the general public about marine ecology and conservation is a very important function and valuable intangible benefit of marine parks that will lead to better community understanding and support of natural ecosystems and their management in the future.

### 3.86.4 Impact on families and society

There should be a positive impact for society as marine parks seek to balance the interests of all marine users for the greater benefit of the community and for the long-term protection and sustainability of South Australia's marine environment.

While the primary goal of marine parks is the conservation of marine biodiversity, the multiple-use approach caters for many different uses. One of the key outcomes will be the establishment of a framework for the integrated and sustainable management of a range of human activities, including economic, cultural, indigenous and social resource use.

The long-term protection of the South Australian marine environment will promote healthy lifestyles for families and the community through clean, healthy seas and marine produce.

However, families of fishers affected by displaced effort who choose to accept a displacement payment may be adversely affected in the short-term. In addition, there is the potential for impact on families through some restrictions on recreational fishing, although such impacts are to be minimised through pragmatic zoning.

Community consultation throughout the development of each marine park and the engagement of regional consultative committees will provide the community with significant custodianship of this initiative.

#### 3.86.5 Regional impact

The natural features found in marine parks make these popular areas for recreational and tourism activities such as snorkelling, SCUBA diving and other nature-based pursuits. These activities can also provide social and economic benefits local and regional communities.

Marine parks recognise and contribute to the *South Australian Tourism Plan 2003-2008*, which states as one of its goals to; 'enhance and grow the State's authentic experiences through value adding on the State's rich natural assets and developing integrated coastal experiences'. It is acknowledged that, with appropriate management, future marine parks will provide the setting for sustainable, nature-based and eco-tourism opportunities.

Consultation on marine parks occurred in regional South Australia during early 2002. Further consultation has occurred in 2005 as part of *the Encounter Marine Park Draft Zoning Plan*, subsequent visits to regional centres (including Pt Lincoln, Pt Augusta, Pt Pirie, Kadina, Whyalla, Ceduna and Streaky Bay) as well as briefings to relevant local councils and Coastal Councils' Committee. Feedback received from these discussions indicates the impact on communities to be minimal, particularly where there is significant community consultation as required by the proposed legislation.

DEH is also scheduled to brief the Regional Communities Consultative Council on 29 November 2005.

Marine parks may also have some negative regional impacts on the commercial fishing and aquaculture sectors through the displacement of effort. The level of this impact will be unknown until zoning arrangements are finalised. This information will be presented to Cabinet on a case-by-case basis for its consideration and approval. Mechanisms are being established to manage displaced effort at a fair and equitable market value.

In addition, a RIAS will be prepared for each marine park(s) following the development of final zoning arrangements to clearly articulate the local implications, both positive and negative, for each marine park.

Planned communication activities supporting the release of the draft Marine Parks Bill for public consultation and the engagement of regional consultative committees and community consultations as part of the development of each marine park should ensure regional communities have considerable input to this initiative.

### 3.87 Relevant Government Policy and / or SA Strategic Plan

3.87.1 The Government's election policies and the *Living Coast Strategy* (July 2004) provide for the protection of areas of outstanding ecological significance through the establishment of a system of multiple-use marine parks. This commitment delivers the State's obligation under the NRSMPA.

3.87.2 This commitment will be realised through the development of the South Australian representative system of marine parks for the conservation and protection of marine ecosystems. South Australia's Strategic Plan's Objective 3 – *Attaining Sustainability* has also recognised this commitment as Target 3.5 to have 19 MPAs in place by 2010.

3.87.3 The establishment of marine parks will also contribute to Objective 2 – *Improving Well Being* of South Australia's Strategic Plan, as the long-term protection of the South Australian marine environment will promote healthy lifestyles for families and the community through clean, healthy seas and marine produce.

### 3.88 Risk Management Strategy

The development of this legislation and the subsequent system of marine parks is one of a number of Government initiatives designed to mitigate the risk of unsustainable development and use of South Australia's marine environment and to ensure benefits for future generations.

There is considerable community and industry support within regional South Australia for the policy as proposed within the *Blueprint*. There is also an expectation that the Government will implement its marine park program given its election policies and the publication of the target of 19 marine parks by 2010.

To not proceed with the legislation would have significant consequences arising from erosion of support and goodwill from both community and commercial sectors. These sectors have lent support to the marine park concept, albeit tentatively as they have stated they need to see the legislation, and proposed displaced effort arrangements, before giving the concept full support.

It is reiterated that the development of each marine park (including analysis of all relevant environmental, social, economic and risk issues) is subject to Cabinet approval and will be considered on a case-by-case basis based on the merits of the marine park and level of impact on the industry and adjacent communities.

The proposed Marine Parks Act contributes to the achievement of the majority of the 25 formal recommendations made in the 54<sup>th</sup> report of the Environment, Resources and Development Committee – Inquiry into MPAs in South Australia.

### 3.89 Consultation

3.89.1 This proposal is a DEH initiative, which has been jointly funded by PIRSA.

3.89.2 The development of the drafting instructions has been progressed through the Marine Planning and MPA Steering Committee. This committee was established as a cross-agency forum to discuss and resolve key issues relating to the establishment of marine parks and is Chaired by DEH and comprises representatives from:

- the Department of Water, Land and Biodiversity Conservation (DWLBC);
- PIRSA – Aquaculture, Fisheries, Planning SA and Minerals and Energy; and
- South Australian Tourism Commission.

Attachment 4 outlines the full range of agencies that have been consulted during the development of the drafting instructions and the preparation of this Cabinet submission. Following are the key comments received from mandatory impact statement officers and other relevant agencies.

3.89.3 Department of Treasury and Finance advised that a costing comment is not required for this submission.

3.89.4 Department of the Premier and Cabinet (National Competition Unit) requested that further information relating to the potential positive and negative impacts associated with the eventual legislation be provided in the impact statements. This matter was discussed with the Department of the Premier and Cabinet and relevant qualitative information has been included in all impact statements.

3.89.5 Department of Trade and Economic Development (Small Business) advised that it supports this submission and acknowledges that there will be a mechanism in place to address any adverse impacts on commercial fishers and aquaculture operators as a result of marine parks and that public consultation will occur to determine zoning arrangements.

3.89.6 The Office of Regional Affairs advised that it supports the submission and notes the public consultation proposed as part of the legislative process. It also supports the development of a RIAS as part of the process for each marine park.

3.89.7 The Department for Families and Communities advised that it has no comment on this submission.

3.89.8 The Department for Aboriginal Affairs and Reconciliation advised that it has no comment on this submission.

- 3.89.9 The Office of Local Government advised that it does not have any concerns regarding the draft Bill, however, suggested continued consultation with local government through the Local Government Association.
- 3.89.10 The Department for Transport, Energy and Infrastructure advised that it supports the submission but is concerned that the proposed powers of the Minister responsible for the Marine Parks Act may compromise the objects of the *Harbors and Navigation Act 1993* to provide for safe navigation and use of South Australian waters. While these concerns may be overcome to a large extent by having in place appropriate agency consultative arrangements Parliamentary Counsel has been asked to consider this aspect in drafting the proposed bill.

### 3.90 Implementation Plan

Subject to Cabinet approval of this submission, DEH will work with Parliamentary Counsel to prepare a draft Bill. It is then proposed to undertake a two-month period of public consultation to engage the community, conservation groups and industries that rely on the marine environment for their income.

The draft Bill will be accompanied by an explanatory paper that will clearly articulate the various clauses of the Bill, as well as proposed arrangements for issues that will be dealt with by subordinate regulations (viz restrictions on activities and uses in marine park zones and the proposed mechanisms for addressing displaced commercial fishing and aquaculture effort). Cabinet will be advised of the commencement of this consultation and be provided with copies of the draft Bill and explanatory paper.

Cabinet will be presented with a revised Bill, incorporating any changes arising from the public consultation process, and a full regulatory impact statement. At the same time, Cabinet approval will be sought to introduce the Bill into Parliament.

The proposed rollout of marine parks will commence following the proclamation of the Act and necessary supporting regulations starting with the Encounter Marine Park, followed by other locations in central and western South Australia, and finally along the southern coast. Each marine park will be subject to community and industry consultation as well as Cabinet approval.

### 3.91 Communication Strategy

Following drafting of the Bill, Cabinet will be advised of the proposal to commence a two-month public consultation period. An announcement regarding the public consultation period will be made via a Ministerial media release.

Copies of the draft Bill and an accompanying explanatory paper will be distributed to key stakeholders (including coastal councils, industry associations, conservation groups, NRM Boards and interested members of the public) as well as being made available on DEH's website.

DEH will undertake a combination of public information sessions, as well as targeted stakeholder consultations on the draft Bill. All costs associated with the communication strategy will be met from within approved budget allocations. Further details of the communication strategy will be provided in the subsequent Cabinet Note.

3.92 Executive Council

This submission does not require the approval of Her Excellency the Governor in Executive Council.

4. RECOMMENDATIONS

It is recommended that Cabinet:

- 4.1 approve the preparation of a draft Bill establishing arrangements for the dedication, zoning and management of marine parks to provide for long-term conservation and protection of representative samples of South Australia's marine environments;
- 4.2 approve forwarding the accompanying drafting instructions (Attachment 1) to Parliamentary Counsel; and
- 4.3 note that it is intended to undertake two months public consultation on the draft Bill and this will be the subject of a further advice to Cabinet prior to the commencement of the consultation.

*In Cabinet*

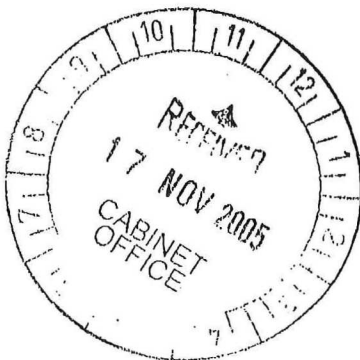


**JOHN HILL  
MINISTER FOR ENVIRONMENT AND CONSERVATION**

- 1 DEC 2005

APPROVED  
*[Signature]*  
PREMIER

Date: 15.11.05



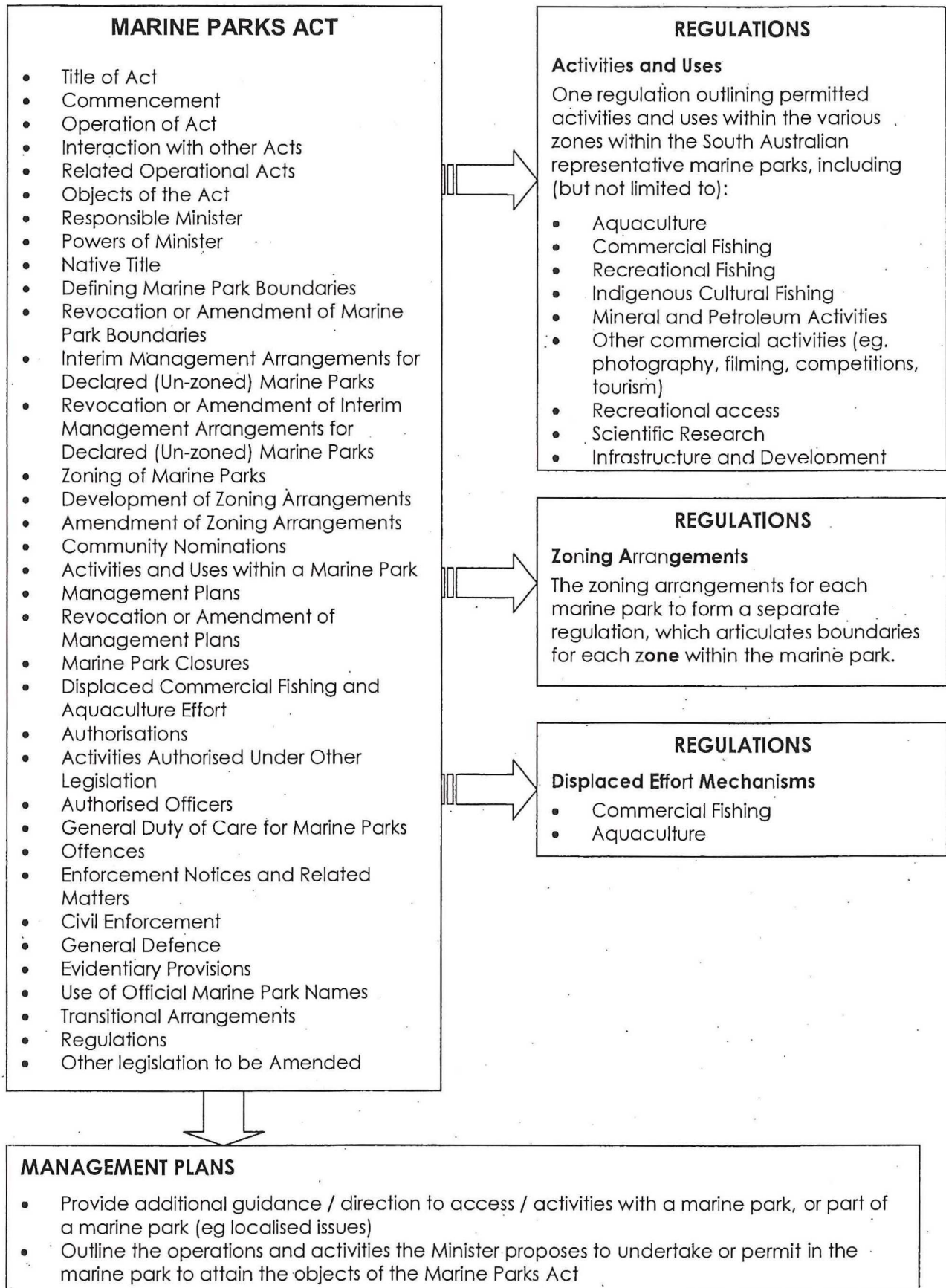
*[Signature]*  
Ministers (Hill) & Holloway have agreed on Planning issues.

**Drafting Instructions for Parliamentary Counsel**

**49 pages removed**

**Exempt clause 10 – Legal Professional Privilege**

**DIAGRAM OF PROPOSED STATUTORY INSTRUMENTS  
TO SUPPORT MARINE PARKS IN SOUTH AUSTRALIA**



*South Australian Representative System of Marine Protected Areas*

# **DISPLACED COMMERCIAL FISHING AND AQUACULTURE EFFORT**

Industry Engagement Paper

September 2005

**DRAFT FOR CONSULTATION PURPOSES ONLY**



**Government of South Australia**

Department for Environment  
and Heritage

## Introduction

South Australia's mainland coastline extends over some 4,000 kilometres, and its territorial waters cover over 60,000 square kilometres. The State's marine environments are unique and precious resources, containing some of the most biologically diverse waters in the world - it is estimated that nearly ninety per cent of the fauna and flora are not found anywhere else.

These environments are also a highly valuable resource for both State and regional economies, supporting an array of activities from fisheries and aquaculture to shipping and mining, while at the same time providing important tourism, recreational and cultural opportunities. The integrity of these environments need to be effectively managed to ensure continuing opportunities for sustainable industry development, whilst simultaneously preserving the biological diversity for the benefit of current and future generations.

## South Australian Representative System of Marine Protected Areas

Marine Protected Areas (MPAs) – also known as 'marine parks' – represent change in which ecological, social and economic issues will need to be addressed. In line with national commitments, the Government is committed to a process of developing the South Australian Representative System of Marine Protected Areas (SARSMPA) that protects representative samples of the State's eight marine bioregions for the public good. The primary focus of the SARSMPA is the protection and conservation of marine biodiversity and ecosystems for future generations, while minimising social and economic impacts in the achievement of the conservation objectives. Marine parks are not a panacea for all marine environmental issues and need to work closely with other complementary management mechanisms, such as:

- the Aquaculture Act 2001;
- the Coast Protection Act 1972;
- the Development Act 1993;
- the Environment Protection Act 1993;
- the Fisheries Act 1982;
- the National Parks and Wildlife Act 1972;
- the Natural Resources Management Act 2004; and
- the Pollution of Marine Waters (Prevention of Pollution from Ships) Act 1987.

It should be noted that the aim of marine parks is biodiversity conservation and not fisheries or aquaculture management – discrete roles that are performed under the Fisheries Act 1982 and Aquaculture Act 2001 by the Department of Primary Industries and Resources, South Australia (PIRSA).

The Government of South Australia recognises that the development of marine parks has the potential to displace existing uses in some areas, and/or require changes to current habitat and resource sharing arrangements. The balancing of conservation with resource use is a complex equation, with key stakeholders wanting to be informed and involved in the decision-making process. As such, it is acknowledged that co-operative decisions with relevant industries and other stakeholders will need to be made to address direct economic and social impacts arising from the establishment of marine parks.

Thorough planning and pragmatic zoning, incorporating community and industry input, should ensure that South Australia's marine parks have the least possible impact on existing commercial activities – including the fishing and aquaculture industries. Notwithstanding these actions, there may be situations where unavoidable conflict occurs as the dedication of a marine park is a resource allocation process whereby marine resources are effectively reallocated from private benefits (eg. fishing) to a broader public benefit (eg. biodiversity conservation).

### **Zoning of Marine Parks**

South Australia's marine parks will be zoned to allow for multiple-use in order to protect and conserve marine and estuarine ecosystems while also providing for the ecologically sustainable use of suitable areas.

A combination of zones and special purpose areas may be used within a South Australian marine park offering various levels of protection and use (refer Appendix I). The creation of marine parks will result in some areas with outstanding marine conservation values being designated as either Restricted Access Zones or Sanctuary Zones to provide the required strict level of protection. Both of these zones would preclude commercial fishing, recreational fishing and aquaculture operations.

As far as practical, marine parks will be zoned in a manner that accommodates existing aquaculture developments, as well as proposed developments that have the appropriate licences / authorisations in place, and any adjacent zones required to support these operations. Marine park zoning arrangements will also consider and endeavour to accommodate Aquaculture Management Zones established under the Aquaculture Act 2001. Following the gazettal of a marine park, new aquaculture developments could occur in marine park zones that are determined to be suitable for aquaculture.

Any displaced effort associated with developing marine parks will most likely be related to the commercial fishing industry. The level of displacement associated with the aquaculture industry is expected to be negligible. Notwithstanding this, effective mechanisms need to be established to provide the surety sought by both industries.

## Displaced commercial fishing and aquaculture effort

### Government commitments

The Commonwealth Government and all State and Territory jurisdictions have committed to the establishment of a National Representative System of Marine Protected Areas. This national approach aims to establish and manage a comprehensive, adequate and representative system of MPAs to contribute to the long-term ecological viability of marine and estuarine ecosystems, while also managing human activities and providing for recreational, aesthetic, cultural and economic needs of indigenous and non-indigenous people, where these are compatible with the primary conservation goal.

In line with this, the Government of South Australia is committed to the development of the complementary SARSMMPA that reflects the varied environments typical of South Australia's marine realm. The Government has established a target of dedicating 19 marine parks in this system by 2010.

Congruously, the Government is also committed through the *Fisheries Act 1982* to ensuring – through proper conservation, preservation and fisheries management measures – that the living resources of the State's waters are not endangered or over-exploited and achieving the optimum utilisation and equitable distribution of those resources.

The Government has established a system of secure and tradeable fisheries access entitlements. In particular, commercial fishers require a licence under specific Schemes of Management (in regulations under the *Fisheries Act 1982*) to take fish for commercial purposes. A policy of limited entry has existed in South Australia since the late 1960s and only a restricted number of licences are available in each fishery, which are traded on the open market. This system of secure and tradeable fisheries access entitlements is designed to encourage capital investment to maximise value from, and conserve, fisheries resources. These secure access entitlements have been designed to enable the fishing industry to autonomously respond to environmental or market forces, while maximising resource stewardship through improved tenure.

Access to fisheries resources that are available to be exploited is allocated between the commercial and recreational sectors. Access is allocated to optimise the economic and other benefits derived from the resources for the benefit of the community. PIRSA Fisheries and the Attorney-General's Department are currently going through a process to recognise indigenous cultural fishing as a separate category of fishing and to formally allocate access to that sector.

The Aquaculture Act 2001 provides for the granting of rights to occupy State waters and provides security for aquaculture operators while protecting the interests of the community. Aquaculture leases provide security of tenure, whilst licences accommodate flexible regulatory and adaptive management practices.

The commercial fishing and aquaculture industries' have expressed concerns that creation of marine parks may threaten the market value of existing licences and leases by introducing uncertainty in relation to access to State waters for wild harvest or farming purposes.

In response, the Government of South Australia has acknowledged its responsibility to address the impacts on commercial fishers and aquaculture operators affected by decisions to establish marine parks. The Government's policy *Blueprint for the South Australian Representative System of Marine Protected Areas* included a commitment that:

'a means to address displaced commercial fishing effort will be developed as part of purpose-specific legislation for the dedication and management of MPAs for those instances where unavoidable conflict occurs'.

Further, the Natural Resources Management Ministerial Council has recently agreed that complementary displaced effort arrangements should be available for both State and Commonwealth licensed fishers. Accordingly, the Government will need to consider displaced effort issues relating to a South Australian commercial fishing licence / registered device endorsement issued by PIRSA Fisheries or a licence / permit issued by the Australian Fisheries Management Authority.

It is important to note that measures to deal with displaced effort are established to achieve structural adjustment and are not compensation per se.

### **Purpose specific legislation**

During the extensive public consultations on the Government's draft MPA Policy in 2002, stakeholders supported the development of a legislative framework for the dedication and management of marine parks, which also addresses the impacts of displaced effort and the establishment of a non-legal appeal process such as a tribunal. The Government has embraced this feedback and is currently developing a Marine Parks Bill to deliver these outcomes. A two-month public consultation period on the draft Bill will be undertaken in early 2006.

A legislated model is proposed for the management of displaced effort by incorporating a power in the proposed Marine Parks legislation to allow regulations to be made to establish mechanisms to address the effect of displaced effort. In particular, three key mechanisms are envisaged:

1. Provision to purchase catch quota entitlements and / or gear entitlements at market rates for instances where only part of an individual's commercial fishing operations are displaced;
2. A formula for calculating a 'displacement payment' for a commercial fishing licence / registered device endorsement / quota entitlement / pot entitlement buy-back for instances where significant effort displacement is required. A buy-back may be voluntary or not, depending on the circumstances; and
3. A process of independent commercial valuations (to suit a range of individual businesses) to negotiate a fair and equitable market rate for the relocation or displacement of aquaculture developments.

Importantly, mechanisms to address the effect of displaced effort will only be enacted once zoning arrangements for a marine park have been finalised and the associated level of displaced effort determined. This should minimise unnecessary angst as draft zoning arrangements are subject to public consultation and hence change.

An independent review process, with further appeal to the Environment, Resources and Development Court, is also proposed for affected fishers / aquaculture operators dissatisfied with the outcome of the displaced effort mechanisms.

While the Marine Parks legislation will be committed to the Minister for Environment and Conservation, the administration of measures to address the effects of displaced effort will be supported by the Minister for Agriculture, Food and Fisheries and PIRSA as the department with the expertise in, and responsibilities for, fisheries and aquaculture management.

### **Commercial Fishing Effort**

In the first instance, the Department for Environment and Heritage (DEH), in consultation with PIRSA, will review zoning arrangements to determine if locations can be identified to deliver the desired conservation outcomes without displacing existing fishing operations. If other locations are not identified, the Government will need to remove the appropriate amount of effort from the industry, based on the level of displacement within a marine park, to avoid increasing fishing pressure in other locations to levels that are unsustainable.

In such circumstances, discussions with PIRSA Fisheries will continue to identify:

- whether the displacement of effort will have an unsustainable impact on the fishery if the effort is relocated to other parts of the fishery (including consideration of access to unallocated resources / latent fishing effort etc). Any assessment on these grounds will take into account ecological impacts on the fishery and economic impacts on other fishers;

- if yes, the possibility to remove effort from the fishery so that displaced effort does not have unsustainable impacts; and
- the impact the displacement will have on individual licence holders.

#### Catch quota or gear entitlement buy-out

If only a small part of a fisher's operation is affected, such as a partial closure of the fishing grounds from which they take their entitlements, it would be appropriate to enter negotiations to acquire the equivalent entitlements (quota or gear) at a commercial value from the affected fisher together with a solatium. These acquired quota or gear entitlements would then be retired from the fishery.

Clear guidelines will need to be established to calculate what percentage of a licence holder's operation is affected by a closure. For example, it may be prescribed in regulation that it will be determined using catch and effort returns submitted to SARDI in accordance with the Fisheries Regulations, and a formula may be required to determine what constitutes a 'significant' impact that triggers the buy-back mechanism.

As an example, the regulation may prescribe that if a certain percentage (say 20%) of a licence holders annual catch quota species was taken in a closed area in three out of the previous five years, then it is appropriate to enter negotiations to buy 20% of the quota for that species.

#### Formula for licence buy-back

In other scenarios, a more significant amount of commercial fishing effort may be displaced, or it may not be possible to facilitate a partial buy-back, which would require the buy-back of one or more licences and/or registered device endorsements. To facilitate this buy-back, a formula based approach is proposed to provide a fair, equitable and consistent value for displacement payments.

The formula would include:

- a commercial valuation for the fishing licence / registered device endorsement / quota entitlements / pot entitlements;
- an income support payment (equal to three times the average of the four highest net incomes before tax from the seven fishing seasons immediately prior to the buy-back); and
- a solatium.

Commercial fishers most affected, together with any commercial fisher with a history of working within the proposed marine park, would be invited to voluntarily apply for a displacement payment.

All applications will be analysed by DEH and PIRSA Fisheries to determine of the appropriate amount of effort to be removed. If this voluntary approach is unsuccessful in removing the appropriate amount of effort, a compulsory acquisition process may be required. However, this would be a last resort option.

Any licence holder dissatisfied with the value of the proposed buy-back may seek an independent review by contacting the Minister for Environment and Conservation within 14 days of being advised. If still dissatisfied with the outcome of the independent review, the licence holder may appeal to the Environment, Resources and Development Court.

A flowchart outlining the suggested Displaced Commercial Fishing Effort process is attached as Appendix II.

### **Aquaculture**

In the first instance, DEH, in consultation with PIRSA, will review zoning arrangements to determine if locations can be identified to deliver the desired conservation outcomes without displacing existing aquaculture operations.

If suitable areas cannot be identified, DEH would continue to work with PIRSA to identify whether the aquaculture operation could be transferred to another location. Such a transfer would necessarily involve an application for the new site strictly in accordance with the Aquaculture Act 2001. It is noted that marine aquaculture in South Australia is licensed under a number of categories and these have varying levels of locational requirements to operate successfully.

If it were found to be feasible to relocate the aquaculture operation, the Government would facilitate the relocation process as quickly and smoothly as possible, including the application process for the new site and issuing of appropriate licences and leases.

In addition, the Government would meet relocation costs, a payment to offset loss of income during the relocation and undertake an assessment to determine if the growth rates and viability of the product is affected by relocation to the new site. An underlying principle is that the relocation provides an equivalent, if not better, outcome for the operation.

Given the tenure rights conferred by the long-term leases (up to 20 years), level of infrastructure and investment associated with aquaculture developments, a formula approach (as proposed for the commercial fishing industry) is not considered feasible for the displacement of aquaculture where relocation is not feasible.

Rather, the Government proposes to engage an independent valuer with aquaculture experience to commence commercial negotiations. Issues such as value and viability of the operation, condition of the infrastructure, potential loss of earnings for the remainder of the lease entitlements and market impact would need to be considered and offset against the broader economic, social and environmental impacts before a final decision is made.

A flowchart outlining the suggested Displaced Aquaculture Effort process is attached as Appendix III.

## ZONING WITHIN SOUTH AUSTRALIA'S MARINE PARKS

For marine parks developed under the SARMSPA, zoning will reflect a multiple-use approach, which provides for the conservation and protection of marine, estuarine and coastal ecosystems, while also providing for the ecologically sustainable use of the area.

The multiple-use approach will be guided by the primary objective of marine parks, which is to protect and conserve comprehensive, adequate and representative samples of the biological diversity, habitats and ecological processes of the area. Most recreational and commercial activities will still be allowed within a marine park boundary. However, there will be particular zones, or periods of time, where some activities will not be permitted. This is primarily to protect significant habitats, species and ecological or cultural features.

Marine parks developed in South Australia will feature a combination of zones and special purpose areas, designed to facilitate varying levels of protection or use:

### **Restricted Access**

To provide protection and conservation for unique and biologically significant habitats within a marine park, by restricting access and prohibiting the removal or harm of plants, animals or marine products. These are generally the smallest component of a marine park.

### **Sanctuary**

To provide protection and conservation for habitats and biodiversity within a marine park, where the removal or harm of plants, animals or marine products is prohibited.

### **Habitat Protection**

To provide protection for species and habitats within a marine park, whilst allowing activities and uses that do not harm habitats or the functioning of ecosystems.

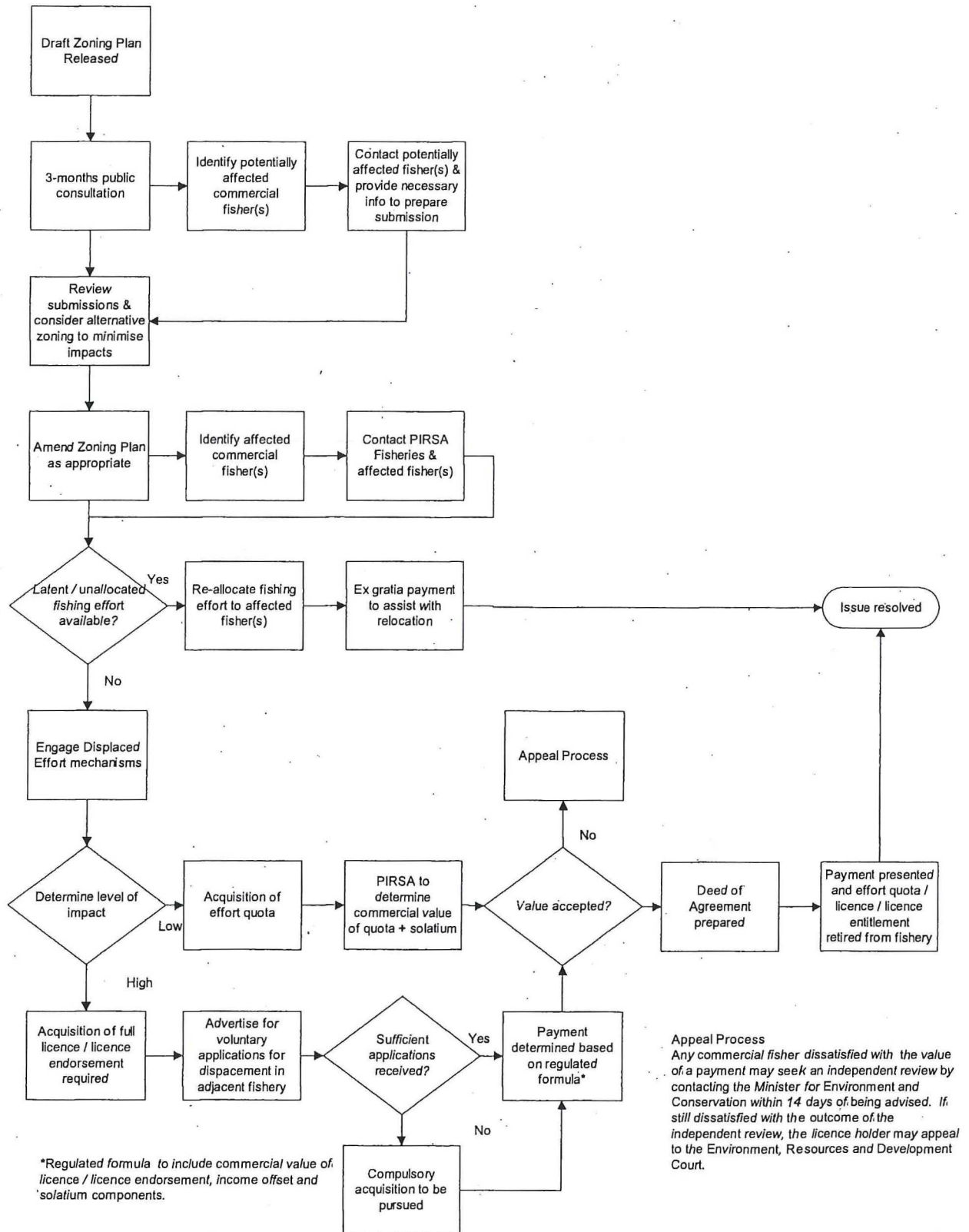
### **General Managed Use**

To provide protection for species and habitats within a marine park, whilst allowing ecologically sustainable use.

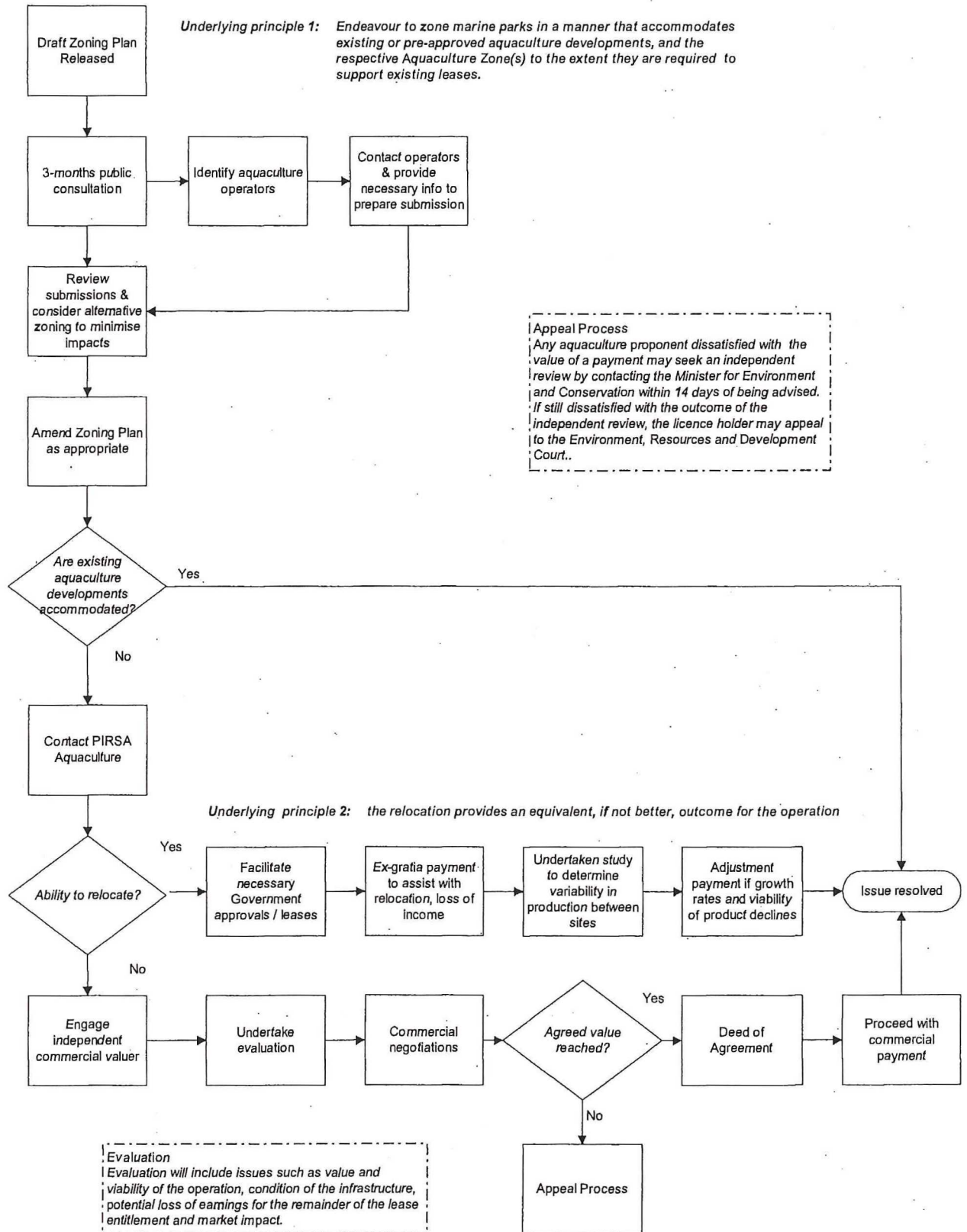
### **Special Purpose Areas**

Special Purpose Areas may also be established to provide for specific activities or uses within a marine park. These are to be considered as an overlay to the aforementioned zones and provide the Government with flexible management arrangements for specific purposes (such as providing for non-conforming uses) within a marine park.

# Displaced Commercial Fishing Effort Process



# Displaced Aquaculture Effort Process



## CONSULTATION UNDERTAKEN

### Marine Protected Areas and Marine Planning Steering Committee

Agency	Name	Position
Department for Environment and Heritage	Greg Leaman	Director, Natural and Cultural Heritage
PIRSA - Aquaculture	Ian Nightingale	Executive Director
PIRSA - Aquaculture	Emily Mellor	Coordinator, Aquaculture Policy
PIRSA - Fisheries	Will Zacharin	Executive Director
PIRSA - Fisheries	Vic Neverauskas	Program Manager, Marine Habitat
PIRSA - Minerals and Energy	David Cockshell	Chief Petroleum Geophysicist
PIRSA - Planning SA	Sue Giles	Principal Planner
Department of Water, Land and Biodiversity Conservation	Roger Wickes	Executive Director, NRM Services
South Australian Tourism Commission	Paul Weymouth	Policy and Planning Manager

### Other Consultation

Agency	Name	Position
Parliamentary Counsel	John Eyre	Deputy Parliamentary Counsel
Attorney-Generals Department	Virginia Leek	Solicitor, Native Title
Attorney-Generals Department	Helen Ward	Solicitor, Advising
Attorney-Generals Department	Helen Wighton	Senior Legal Officer
Attorney-Generals Department	Michael Wait	Solicitor, Constitutional Matters
Office of Local Government	Colin Hore	Senior Project Officer
Department for Aboriginal Affairs and Reconciliation	Tom Rich	Senior Policy Officer
Department of Transport, Energy and Infrastructure	Peter Hollister	Director, Marine Transport Policy
Department of Transport, Energy and Infrastructure	Andrea Pearce	Manager, Legislation and Intergovernmental Relations

### Impact Statements

Agency	Name	Position
Department of Treasury and Finance	Peter Foreman	Account Manager
Office of Small Business	Allan Joy	Director
Office of Regional Affairs	Evan Hill	Project Manager
Department of Families and Communities	Liz Wilson	Director, Social Inclusion, Strategy & Research
Department for Environment and Heritage	Jill Brooks	Manager, Cabinet Related Business
Department of Water, Land and Biodiversity Conservation	Sam LeRay	Policy Officer
Environment Protection Authority	Peter Watters	Senior Policy Officer