

AUSTRALIAN MARINE PARKS

Assessment and Authorisations Policy



Australian Government
Parks Australia



Australian
Marine Parks

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1 Purpose

The purpose of this policy is to outline the approach that the Director of National Parks (the Director), and their delegates, will take when assessing and making decisions in relation to authorising activities in Australian Marine Parks (AMPs). This policy will ensure assessment and authorisation requirements, as identified in AMP network management plans and pursuant to the requirements of the [Environment Protection and Biodiversity Conservation Act 1999](#) (EPBC Act) and [Environment Protection and Biodiversity Conservation Regulations 2000](#) (EPBC Regulations) made under that Act, are clearly articulated and that decision making is lawful, robust, consistently applied and transparent to all AMP users. In the rest of this Policy, references to decisions and actions by the Director include decisions and actions by Parks Australia personnel acting as delegates of the Director.

2 Regulatory framework

The Director is responsible, under the EPBC Act, for the administration, management and control of Commonwealth reserves. AMPs are Commonwealth reserves proclaimed under the EPBC Act over areas of Commonwealth waters.¹ Parks Australia, a division of the Department of Agriculture, Water and the Environment, supports the Director in the exercise of its powers and performance of its functions under the EPBC Act, including in relation to AMPs.

Management plans for the five AMP networks and the Coral Sea Marine Park have been made under the EPBC Act. The management plans are:

- [South-east Commonwealth Marine Reserves Network Management Plan 2013;](#)
- [Coral Sea Marine Park Management Plan 2018;](#)
- [North Marine Parks Network Management Plan 2018;](#)
- [North-west Marine Parks Network Management Plan 2018;](#)
- [South-west Marine Parks Network Management Plan 2018;](#) and
- [Temperate East Marine Parks Network Management Plan 2018.](#)

Under these management plans, a range of activities that would otherwise be prohibited or controlled by EPBC Act and EPBC Regulations, may be conducted in AMPs if they are either authorised by and performed in accordance with the management plan itself without further assessment (allowed activities) or appropriately assessed and authorised by the Director in accordance with the management plan (allowable activities).

¹ Commonwealth waters start at the outer edge of state and territory waters, generally 3 nautical miles from the shore, and extend to the outer boundary of Australia's exclusive economic zone, 200 nautical miles from the shore and includes waters in Australia's external territories.



3 Scope

This policy applies to all decisions made by the Director relating to the authorisation of allowable activities within AMPs in accordance with management plans for AMPs. Such activities may also trigger the imposition of other statutory requirements under associated Commonwealth, state or territory legislation however this policy is limited to how activities regulated by the EPBC Act and EPBC Regulations can be assessed and authorised under management plans for AMPs.

4 Guiding Actions

The Director's approach to decisions in assessing and authorising activities within AMPs is guided by the following:

- **transparent and accountable actions** – the authorisation process is transparent, and the Director is accountable for decisions taken; the decision-making process is robust, lawful and consistently applied;
- **risk and evidence-based actions** – the Director seeks to develop and apply best practice approaches to regulation and decision-making. This includes reviewing and developing policy to ensure assessment and authorisation requirements are clearly articulated;
- **collaboration and inclusivity actions**– the Director seeks to engage, learn from and work with the regulated community and other groups whose interests may be affected, to inform continuous improvement; and
- **effective service actions** – the Director will seek to develop a customer focused online authorisation system for users that includes monitoring, reviewing and reporting on the effectiveness of the authorisation process.

Authorisation assessments and decision-making by the Director will also be consistent with the Australian IUCN reserve management principle assigned to the relevant AMP or zone of the AMP by its associated management plan, as outlined in Part 1 of Schedule 8 of the EPBC Regulations.

https://www.legislation.gov.au/Details/F2020C00778/Html/Text#_Toc49854194

5 Types of authorisation

An authorisation from the Director is a legal permission granted under the EPBC Regulations and/or an AMP management plan to conduct an activity that would otherwise be prohibited or controlled by the EPBC Act or EPBC Regulations.

Management activities wholly funded and undertaken by the Director, or entities engaged by the Director to undertake activities on behalf of the Director within AMPs, including via memoranda of understanding, service contracts or similar, do not require further authorisation to undertake these activities within AMPs. However, the Director (or its contractor) will still need to comply with the relevant management plan (in so far as it relates to the Director) for the particular activity, including any appropriate assessment in relation to the impacts of the relevant activity and decision making



processes, and conduct any consultation with relevant indigenous individuals, groups or associations deemed necessary.

Each AMP management plan assigns the zones and the management approach to be applied to activities within these zones. Under the management plans, activities are categorised as:

- **allowed** – without the need for further authorisation, where consistent with zone objectives and conducted in accordance with management plan prescriptions;
- **allowable** – able to be conducted if an authorisation is issued; or
- **not allowed** – not consistent with zone objectives.

AMPs managed under different AMP management plans may require a separate (individual or specific group) authorisation to be issued following an approved application process. Where a management plan allows for authorisation of an activity in a zone, authorisation may take different forms as listed and discussed in more detail below:

- class approval (refer section 5.1)
- permit (refer section 5.2)
- licence (refer section 5.3)
- lease (refer section 5.4)

5.1 Class approvals

Class approvals are used to authorise a specified class of activities carried out by a specified person or class of persons and are issued under each management plan. Typically, these activities will be carried out in the same way by all persons and are most frequently issued for activities that have been assessed and approved under other parts of EPBC Act or by other government or industry processes, to avoid duplication in assessment and approval processes. The approved persons undertaking an activity covered by a class approval do not need to apply individually but are required to observe the class approval conditions which specify how activities may be undertaken in specified zones of AMPs.

5.1.1. Development, variation, suspension, or cancellation of class approvals

Management plans provide that the Director may issue class approvals for certain activities. To develop new class approvals the Director will:

- undertake consultation with parties or organisations representing parties that would be approved persons under the new class approval;
- seek to identify and consult as appropriate with any other stakeholders (including other government agencies) who have an interest affected by the new class approval; and
- once an approval is granted, communicate with approved persons and other interested stakeholders to inform them of management requirements and approval conditions.



Development of new class approvals or changes to existing class approvals, including assessment and decision making in relation to those class approvals, must be consistent with the relevant management plan.

A class approval may be varied, suspended or cancelled, and approval conditions may be varied or revoked, or additional conditions imposed, if the Director is satisfied that:

- the activity has not been, is not being, or likely will not be conducted in accordance with the approval or a condition of the approval;
- the assessment of impacts conducted under other government or industry assessment processes is inconsistent with section 4.3.1.3 or is not made in accordance with the approval or a condition of the approval;
- the impacts of the activity are not acceptable;
- the activity is likely to cause an unacceptable risk to public health and safety; or
- there are reasonable grounds for believing that if the decision to issue the approval were being considered again, the approval would not be issued or would not be issued on the same conditions (for example, because of new information or changes in relevant matters).

If it is considering varying, suspending, or cancelling a class approval or varying, revoking or adding approval conditions, the Director will undertake a similar consultation process as it undertook when issuing the relevant class approval. Section 4.4.2 of the management plans include further details in relation to class approvals, for example, the making of class approvals and the types of conditions a class approval might include and other provisions relating to the varying, suspending or cancelling of class approvals.

Any individual application (non - entity or non - registered business/company) received by the Director for authority to conduct an activity covered by a class approval will likely be denied and the applicant referred to the relevant class approval. Class approvals will likely not be issued for single entities.

5.2 Permits

Where the relevant AMP management plan prescribes that activity is allowable by permit, the Director may issue a permit in accordance with Part 17 of EPBC Regulations. Permits are generally issued for the expected length of the activity however, the Director will consider the length of permits on a case by case basis, and may have regard to the:

- potential impact of the permit term on the natural, heritage and cultural values of the AMP/s;
- potential impact of the permit term on the use of the AMP/s by other AMP users;
- need, efficiency and effectiveness of any particular term for the permit;
- risks (known or unknown) associated with an activity carried out over that permit term; and
- previous compliance history of the applicant.

Permit applicants will be invited to enter into a permit agreement with the Director during the permit application process prior to a permit being issued. The permit agreement may include:



- an indemnity and release in favour of the Director in relation to any legal claims or proceedings, whether by the permittee or third party, arising from the actions of the permittee during the conduct of the permitted activities;
- an acknowledgement by the applicant that any conditions applied under any future issued permit are understood, legally binding, and will be complied with by the permittee and their personnel, invitees, etc. while in the relevant AMP; and
- other obligations which survive the term of the permit or do not relate specifically to the conduct of the permitted activity. For example, obligations relating to the provision of information or reporting about the activity to the Director, etc., i.e. if a permit is issued for scientific research, this includes reporting on research trips (within designated periods), lodging metadata in designated repositories, and notifying the Director about publications and media communications arising from permitted activities.

5.2.1 Permit variations

The conditions of a permit may be varied in accordance with reg 17.09 of the EPBC Regulations at the instigation of the Director or a permit holder. Permit holders seeking a variation must apply in writing to the Director (Reg 17.09(4)). The request for variation must include a statement of the reasons why the holder thinks the conditions of the permit should be varied or revoked.

The Director may vary the conditions of a permit by issuing written notice to the permit holder. Conditions will only be varied if the proposed change would not have altered the original assessment outcome, examples of an acceptable change include the nomination of a replacement vessel or minor changes to specimen sample numbers. Conditions will not be varied if the proposed changes contravene the requirements for a permitted activity under r17.03 or the relevant management plan.

The permittee, purpose of the permit, activity to which the permit relates, and relevant AMP cannot be varied and will require a new application, assessment and permit. A permit variation may be given for changes to the permit conditions and/or minor changes to the scope of the permitted activity (not to the permit itself). Minor variations to the scope of the permitted activity may be considered if they do not significantly change the original assessment decision. For example, this could include a small number of additional sampling replicates in the permitted zone type; the addition of a new sampling location in the same zone type; extension of expiry date and new vessels.

A permit is only valid for the permit holder and may only be transferred in accordance with r17.11 (Section 11).

5.2.2 Permit cancellations

Permits may be cancelled by the Director. All conditions stipulated on a permit remain active for the period in which the permit is in effect (for example, until the permit is cancelled). Undertakings made in signing the permit agreement (see Section 6) remain active after a permit is cancelled.



The Director may cancel a permit for the following reasons (as per reg 17.12 (1) of the EPBC Regulations):

- the permit holder contravenes a condition of the permit;
- there are reasonable grounds for believing the permit holder is likely to contravene a condition of the permit; and
- if the application for the permit that had been issued were being considered again, the permit would not be issued.

If the Director is considering cancelling a permit, the permit holder will be advised in writing. The permit holder will be given the opportunity to present any relevant information to the Director to assist in deciding whether to cancel the permit or not. The Director will advise of its decision whether to cancel the permit in writing.

5.3 Licences

Licences may be used to authorise commercial activities allowable under a management plan². A licence is a contractual arrangement, entered into by the Director and the applicant to authorise, and regulate the conduct of, a commercial activity in accordance with a management plan. Licences must not be issued inconsistently with a management plan.

Licences must be in the name of a legal entity, such as a person, company, or other incorporated entity. Licences will not be issued to business or trading names.

Activities that may be authorised by licence include:

- commercial fishing, for persons not otherwise covered by a class approval;
- commercial pearling, for persons not otherwise covered by a class approval;
- commercial aquaculture, for persons not otherwise covered by a class approval;
- commercial tourism, including nature watching, scuba diving/snorkelling, charter fishing, aviation tours (if operating in the airspace above an AMP, up to 3000 metres above sea level) and cruise ships which visit an AMP (excludes transiting and stopping and anchoring as rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress);
- commercial research and monitoring, where the primary purpose is to support commercial gain or where research informs part of a larger operation, the primary aim of which is commercial activity;
- commercial media, including photography, documentary or movie making (excluding news of the day activities);
- mining operations, for mining operations which are the construction and operation of pipelines;

² The *South-east Commonwealth Marine Reserves Network Management Plan 2013–2023* does not provide for the issue of licences. Activities that would otherwise be authorised using a licence under this policy will be authorised via a permit (see Section 5).



- erecting structures and carrying out works, including installation of moorings, submarine cables, platforms, jetties, pontoons and other infrastructure; and
- new activities which are not contemplated by a specific prescription of a management plan.

5.3.1 Licence terms

A licence may be issued for up to 10 years. However, if justified by the particular circumstances of the case (such as where the licence relates to permanent or semi-permanent infrastructure), a licence may be issued for longer terms. When determining the duration of a licence, the Director may have regard to the:

- Operational life of a specific AMP management plan
- potential impact of the licence term on the natural, heritage and cultural values of the AMP/s;
- potential impact of the licence term on the use of the AMP/s by other AMP users;
- need, efficiency and effectiveness of any particular term for the licence;
- risks (known and unknown) associated with the activity carried out over that term, including if the activity uses new or untested methods, materials or equipment where impacts and risks are uncertain;
- nature and scale of the activity and what might be a reasonable time for a return on investment for the applicant;
- applicant's experience in conducting similar activities in AMPs or other jurisdictions;
- applicant's skills and qualifications in relation to the relevant activity, i.e. evidence of quality service delivery or higher-level accreditations, such as advanced ecotourism certification; and
- applicant's compliance history.

5.3.2 Licence variations

Variations to licences may be sought by the licence holder or the Director in writing and will be considered on a case by case basis. Any variation to a licence proposed by the licence holder will be assessed by the Director in accordance with the requirements of the relevant management plan and the provisions of the existing licence. A licence holder seeking a variation should specify the requested variation and explain why it is required. If the Director approves a variation, a Deed of Variation will be negotiated between the Director and licence holder to alter the licence.

5.3.3 Insurance requirements

The Director's Chief Executive Instructions (2015) require that persons carrying out commercial activities under authorisation from the Director have appropriate public liability insurance. Applicants to whom this is relevant must hold public liability insurance for activities in AMPs for at least \$10 million per individual claim. Evidence of this insurance will be required before an authorisation may be granted. These insurance requirements may also be applied to some non-commercial activities, where deemed necessary by the Director and for an amount determined by the Director.



5.3.4 Termination of a licence

Licence holders may terminate their licence by providing a period of notice (specified in the licence) to the Director and complying with all termination obligations set out in the relevant licence. The Director may also possess licence termination rights under a licence. Termination of the licence, either by the licence holder or the Director, does not discharge any obligations, including financial, reporting, insurance or confidentiality, which, pursuant to the terms of the relevant licence, survive the licence termination.

5.3.5 Licence Fees

The Director may apply fees for a licence, during and subject to, negotiation of the licence between the Director and the applicant. In determining the fee, on a case by case basis, the Director may consider matters such as:

- the commercial value of the authorisation;
- the exclusivity of the arrangement; and
- what would be a contribution to the cost of managing the AMP or network commensurate with the scale of the activity.

Fees may also be applied by the Director for the variation or transfer of a licence, and this is specified in the licence. Fees may not be applied to commercial tourism activities without the Director providing a minimum period of 18 months' prior notice to affected commercial tourism operators to allow them to manage and mitigate the effects of these costs on their business operations.

5.4 Lease

A lease may be issued for activities such as those requiring exclusive use of an area of land or seabed within an AMP. Leases provide security of tenure over the lease area, which may be used to support investment in infrastructure.

The administrative arrangements that apply to leases are largely the same as those which apply to licences (for example negotiation of conditions, lease term, insurance requirements, fees and the process for variation, transfer and cancellation).

6 Applying for authorisations

Applications for an authorisation to conduct an activity in an AMP, either via a permit, licence, or lease, shall be made via an online application on the Parks Australia website:

<https://onlineservices.environment.gov.au/parks/australian-marine-parks>

It is the responsibility of the applicant to ensure that their application is complete, compliant and includes all necessary information that will allow the Director to make a decision on the application submitted. All applicants are asked to provide a signed and witnessed declaration statement confirming that the details submitted are true and correct. Ultimately, the onus is on the applicant to supply sufficient information in support of their application.



Insufficient information provided by the applicant in the original application or failure to provide requested information within a reasonable timeframe (see below) may lead to an application being refused.

7 Assessment of applications

All applications for the authorisation of an activity in AMPs will be assessed in accordance with:

- the EBPC Act;
- the EPBC Regulations, including Part 17 of EPBC Regulations (for permit applications);
- relevant management plans;
- this policy;
- any other relevant guidance documentation issued by Parks Australia; and
- any other relevant matters.

When an application is received, it will initially be assessed for adequacy of information, including whether required documentation and certificates have been provided. Where the Director identifies that the applicant has not supplied adequate information to complete an assessment, further information may be requested.

The Director will generally allow a minimum of 14 calendar days for the applicant to respond, unless a short timeframe is appropriate in the circumstances. The assessment of applications will usually be suspended until receipt of the requested information. The period for response may be extended by the Director (at its sole discretion) if requested by the applicant in writing, including any reasons for the proposed extension. Factors the Director may consider in deciding to grant an extension include:

- the nature of the information required;
- the circumstances of the applicant which may prevent or delay the provision of the requested information; and
- the compliance history of the applicant.

If no response is received within the period specified in the request for additional information or within any extended timeframe granted, the Director may refuse the application.

The Director will endeavour to conclude assessments and make decisions on whether to issue authorisations within 40 business days of receiving an adequate and complete application. This does not account for any delays incurred waiting for information or a response from an applicant, which may extend the timeframe for making decisions beyond that specified above.

7.1 Management plan prescriptions

Management plans, at section 4.3.1 of Part 4³, prescribe rules that apply to decisions by the Director regarding the issuing of authorisations. These prescriptions outline matters the Director must take into account when making a decision, and criteria that must be satisfied in order to authorise an activity.

In addition to the prescriptions which apply to all authorisation decisions, management plans also contain activity-specific prescriptions. These prescriptions are found in the relevant activity section of Part 4 of the management plans.⁴

The decision-making prescriptions include that:

- a) the Director’s decisions about activities will be consistent with the objectives of the relevant management plan, objectives of the zone or zones in which the activity will be or is being conducted, and the applicable reserve management principles⁵;
- b) before making a decision, the Director must be satisfied that the proponent understands the AMP values, environmental impacts and risks of the activity to AMP values are understood, evaluated, and able to be avoided or reduced to **as low as reasonably practicable**, and the proponent has the capacity to comply with any authorisation conditions and regulatory requirements; and
- c) the Director will not authorise an activity unless the potential impacts and risks of the activity on AMP values and **representativeness** are **acceptable**.

Further guidance on the application of the terms “**acceptable**”, “**as low as reasonably practicable**” and “**representativeness**” for the purposes of this policy is provided below and in Appendix B.

7.2 Marine park values

AMP values are the attributes that make an AMP or network unique. It is an objective of management plans to provide for the protection and conservation of biodiversity and other natural, cultural and heritage values of an AMP and the ecologically sustainable use and enjoyment of the natural resources in an AMP, where these are consistent. An application for authorisation to conduct an activity should demonstrate to the Director that the applicant understands the values of the relevant AMP/s and, if there is a risk of impact to those values arising from the activity, that they propose strategies in concept and practice, to minimise the risk of impact to those values.

Under management plans, values are broadly defined as the following:

- Natural values – habitats, species and ecological communities within AMPs, and the processes that support their connectivity, productivity and function;

³ The *South-east Commonwealth Marine Reserves Network Management Plan 2013-2023* differs from other management plans and has decision making considerations outlined in Strategy 2 in Part 4.

⁴ The *South-east Commonwealth Marine Reserves Network Management Plan 2013-2023* differs from other management plans and sets out activity specific prescriptions at Part 5.

⁵ EPBC Regulations, Schedule 8



- Cultural values – living and cultural heritage recognising Indigenous beliefs, practices and obligations for country, places of cultural significance and cultural heritage sites;
- Heritage values – non-Indigenous heritage that has aesthetic, historic, scientific or social significance, such as shipwrecks; and
- Socio-economic values – the benefit of AMPs for people, businesses and the economy.

All management plans outline values for AMPs. Not all types of values apply to all AMPs. When assessing applications for authorisations, the Director will consider all relevant information currently available on AMP values, including information obtained since the introduction of a management plan.

7.3 Risk Management

A critical element in assessing an application is understanding and managing the risk of impacts to the AMP, and its natural, cultural and heritage values, associated with the proposed activity. Most activities in AMPs present some level of risk of impacts. When assessing an application, the Director may have regard to a range of considerations including:

- the known values of the proposed location of the activity;
- the potential interactions between those values and a particular activity;
- the potential impacts associated with that interaction;
- the likelihood and consequence of those impacts;
- the precautionary principle; and
- the likely risk rating arising from the above considerations.

To ensure specific risks are properly identified and managed, the Director will seek to develop a register of known risks to AMP natural, cultural and heritage values associated with activities and locations, and will rate these risks. Through ongoing reference to the risk register, known risks associated with particular activities at particular locations can be managed consistently.

The register will be regularly updated to ensure that all risk ratings reflect current conditions, such as advances in scientific knowledge, improved understanding of cultural and heritage values and new user equipment and methods.

Where new potential risks arise during an application assessment that have not already been considered in the register, a risk matrix (Attachment A) will be used to rate those risks. After looking at the likelihood of a risk materialising and the environmental consequences if a risk did materialise, a risk will be rated as *low*, *medium*, *high* or *extreme*. A risk rated above low may be reduced by applying conditions to an authorisation (see Section 8).

For an application to be approved, the residual risk (after that risk has been reduced through conditions) presented by an activity must be considered by the Director to **be as low as reasonably practicable** and **acceptable** (see Appendix B, Risk Management Terminology). Individuals, both within and outside the Department, may also be consulted to provide expertise, assess risks, and minimise the potential



impacts of particular activities, including to particular species or other components of AMP values (e.g. marine heritage, species listed under the EPBC Act, etc.).

Where uncertainty exists as to the risks associated with a particular activity, the Director will apply a precautionary approach. Such an approach may involve, but is not limited to, restricting the scope or duration of the activity, imposing conditions that require monitoring of the impacts of the activity, or requiring additional studies to be undertaken or information to be supplied to help inform the risk assessment. Where uncertainty and/or the risk remains high, authorisation is unlikely to be given.

Where a risk to cultural, heritage or socio-economic values are not understood well enough to confidently assign likelihood and consequence in a risk matrix, the assessment will consider the views of traditional owners, stakeholders and experts (see 7.5 *Consultation and engagement* below).

7.3.1 Installation and operation of pipelines

The management plans⁶ provide that the Director may issue an authorisation when pipelines are proposed in certain zones (as specified in the management plan e.g. National Park or Habitat Protection zones) if satisfied that **alternative routes are not feasible or practicable**.

In considering the feasibility of an alternative route, the Director may consider its availability and whether it can reasonably be used after taking into consideration existing technology, logistics in light of overall project purposes, and the potential impacts of that route to the environment or AMP values.

A proponent would generally be considered to have no practicable alternative to routing the pipeline through one or more of the zones subject to the prescription, if the alternative routes would:

- (if proposed outside the AMP) result in unacceptable indirect impacts to the AMP and/or unacceptable impacts to matters of national environmental significance including significant impact to the environment in a commonwealth marine area; or
- (if proposed within another zone of the AMP) result in a significantly greater quantum of impact to AMP values.

In the latter case, routing a pipeline around the zone subject to the prescription:

- would be unlikely to satisfy the decision-making requirement to reduce impacts to **as low as reasonably practicable**; and
- the proponent would still have to demonstrate that the alternative route (i.e. the route with the smaller quantum of habitat impact) would not unacceptably impact the **representativeness** of the AMP.

In considering alternative routes, it would not generally be sufficient for the proponent to demonstrate that an alternative route is **less** practicable. Construction costs for alternative routes would typically not

⁶ Excluding the *South-east Commonwealth Marine Reserves Network Management Plan 2013-2023*, which does not include this prescription, and the *Coral Sea Marine Park Management Plan 2018*, which does not allow mining activities.



be considered as a measure of feasibility and a range of specific conditions may be applied to any authorisation (see Section 8).

7.4 Modification of applications

Where an assessment indicates that aspects of an activity pose a risk of unacceptable impacts, the Director may (but is not obligated to) give applicants an opportunity to modify their application or to reduce impacts to **as low as is reasonably practicable** and reach a level of potential residual impact that is considered acceptable. Modifications could include selection of suitable mitigation measures to either reduce the consequence/severity or likelihood of that impact or avoidance of a particular area/zone in the AMP. The Director will advise the applicant in writing of any unacceptable impacts identified during the assessment process and allow the applicant to respond with any relevant information. A minimum of 14 calendar days will generally be allowed for an applicant to respond, unless a different timeframe is considered appropriate. In some circumstances, an authorisation may be granted by the Director which does not fully authorise an activity to the extent requested in the application. e.g. certain activities may not be allowed in particular zones, or the number of samples taken for a scientific study may be limited, etc.

7.5 Consultation and engagement

In assessing an application, the Director must consider the potential impacts of an activity on AMP users, stakeholders and Indigenous people. Information on potential impacts will be obtained by identifying which stakeholders and Indigenous groups should be consulted and forwarding appropriate information to them as necessary. The extent and degree of consultation required will be determined on a case-by-case basis and be commensurate to the scope and nature of the activity proposed in the relevant application.

7.5.1 Indigenous consultation

‘Traditional owners’ refers to a local descent group of Indigenous people who have common spiritual affiliations to an area of sea country and are entitled by Indigenous traditions to fish and hunt in that area of sea country.

The Director recognises that traditional owners are the primary source of information on the value of their cultural heritage and seeks their active participation in the identification, assessment, and management of Indigenous cultural heritage values in AMPs. The Director also encourages applicants to consult with Indigenous organisations prior to submitting applications for authorisation. This is consistent with the [Ask First: A guide to respecting Indigenous heritage places and values](#) and the [Engage Early: Guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999](#).

Where an applicant has undertaken consultation with Indigenous organisations, they will be required to provide evidence to satisfy the Director that they have sufficiently consulted and taken into consideration any feedback received. To ensure that an Indigenous organisation’s views have been accurately interpreted by the applicant, the Director may consult with relevant Indigenous organisations



to ensure that they do not consider that the proposed activity will result in an unacceptable impact on Indigenous cultural heritage values.

Where consultation with relevant Indigenous organisations is not conducted by the applicant, the Director will endeavour to consult with relevant Indigenous organisations on proposed activities in AMPs that overlap with the sea country of a particular Indigenous organisation's traditional owners. When the Director conducts consultation with Indigenous organisations to inform an authorisation assessment, Indigenous organisations will generally be provided 28 calendar days to respond.

8 Conditions

Authorisations for activities in AMPs may be subject to conditions.

Conditions can assist the Director to protect AMP values, ensure stakeholders are consulted, undertake monitoring and audit of activities, and to obtain information about how AMPs are used.

Conditions on authorisations are categorised as follows:

- *General conditions* are, depending upon the activity, generally applied in all authorisations. They relate to protecting the values of AMPs, compliance and auditing of authorisation holders, training and qualifications for authorisation holders, safety obligations, vessel operations, and providing notifications of safety incidents and hazards to the Director.
- *Activity conditions* relate to the conduct of a specific activity, such as tourism, drone use, research activities, etc. and apply to authorisations for that activity.
- *Location conditions* apply to specific areas, zones or AMPs. These conditions are generally included to mitigate impacts and risks specific to a particular location.

Activity or location conditions are placed on authorisations to mitigate identified risks and impacts to AMP values, AMP users and other stakeholders from particular activities and in particular locations. Some authorisations may require tailored activity conditions which are suited to the needs of that activity in a particular location. General, activity and location conditions may be made available on the Parks Australia website to provide applicants with guidance of what types of conditions are likely to be imposed to effectively mitigate risks and impacts to AMP values.

Review of conditions may include consultation with Commonwealth, State and Territory agencies to align and streamline conditions where practicable.

9 Notification of assessment outcome

After assessing applications, the Director will advise applicants of the outcome in writing.

9.1 Approved authorisations

When a permit application is approved, the permit will be provided to the permit holder. The permit may be accompanied by information relevant to the permit, such as applicable codes of practice or nature watching guidelines.



For licence and lease applications, the Director may propose a draft licence or lease for consideration by the applicant. The terms and conditions of a licence or lease may be negotiated. Once both parties are satisfied with the terms of the licence or lease, the applicant will be invited to execute the document and return it to the Director for counter execution. The authorisation is not effective until the Director counter executes the document.

9.2 Refused applications

If the Director refuses an application, the applicant will be advised in writing. Notification will include reasons for refusal and advice on review rights.

9.3 Review of decisions

All applicants and any party with an interest in an assessment decision may ask to have a decision reviewed. This may include an individual, a group of individuals or a corporate entity.

The processes for review of decisions are outlined in section 4.3.3 of the management plans⁷. Review of a decision about a permit will be conducted in accordance with Division 14.3 of the EPBC Regulations. Reviews of decisions about licences and leases will be conducted in the manner outlined under Division 14.3 of the EPBC Regulations.

Any party with an interest affected by a decision who has submitted a request for a review of the decision will be provided a statement of reasons explaining the grounds for the decision.

10 Monitoring and auditing

The Director will conduct a program of monitoring and auditing of authorisation holders to ensure that activities are compliant with conditions of approval. While all authorisation holders are subject to monitoring and auditing, the Director will prioritise these actions based on factors including assessed risk to AMP values and potential non-compliance. This will be outlined in the audit policy which, at the date of release of this Policy, is in development.

If an authorisation holder does not comply with the terms of their authorisation, the Director may:

- issue a formal warning notice;
- depending upon the type of authorisation held, impose new or altered conditions, suspend or terminate the authorisation, or refuse future applications from that authorisation holder; and/or
- take other enforcement actions, including issuing infringement notices, seeking criminal prosecution by the Commonwealth Department of Public Prosecutions (CDPP), or bringing civil penalty proceedings against the authorisation holder.

⁷ The *South-east Commonwealth Marine Reserves Network Management Plan 2013-2023* differs from other management plans and has processes for review outlined in Strategy 2 of Part 4.

11 Transfer of permits, licences or leases

Permittees, licensees or lessees may wish to transfer their authorisation to another entity, for example if the business is sold. Permits, licences and leases are not automatically transferred.

For permits, the proposed transferee must apply to the Director for a transfer in accordance with reg 17.11 of the EPBC Regulations, including the reasons for the requested transfer, details of the proposed transferee, and information required by reg 17.11(3A). The Director may request that this information is provided in a set form to be completed by the proposed transferee. The application for transfer must also be accompanied by the fee prescribed by reg 17.11(4). To transfer a permit, the Director will assess the application in accordance with the relevant management plan, this policy, and reg 17.11 of the EPBC Regulations, and must have reasonable grounds for believing that the proposed transferee will meet the conditions of the permit and be able to carry out the activity safely without adversely impacting AMP values. The transferee will need to sign a new Permit Agreement and Declaration.

For licences and leases, the outgoing operator must comply with the terms of their existing authorisation as they relate to transfers and the Director will (at its sole discretion) assess and make decisions in accordance with the relevant management plan and this policy in relation to the proposed incoming operator. Licensees and lessees should contact the Director to discuss the information required to support an application for transfer and the process.

Once a decision is made, the Director will advise the relevant permittee, licensee or lessee of that decision and, if the application is not approved, will provide reasons. If the transfer is approved:

- for permits, the Director will re-issue the permit under the name of the incoming operator; and
- for licences and leases, the Director will provide a deed of novation for negotiation and execution by the outgoing operator, the incoming operator and the Director.

Any incoming operator must not carry out a regulated activity in an AMP until they are authorised to conduct that activity, i.e. they have been issued a permit by the Director or a deed novating the relevant licence or lease has been executed by all three parties.

12 Determinations

Under the EPBC Regulations the Director may make determinations, amongst other purposes, relating to the conduct of regulated activities in AMPs. A determination is an instrument which sets out how, if authorised either by the relevant management plan or another form of authorisation, a particular regulated activity can be conducted in an AMP. For example, under several of the EPBC Regulations, including regs 12.35, 12.58, 12.28 or 12.14, particular requirements for the conduct of regulated activities are imposed by determinations made by the Director, including the manner in which an activity may be undertaken, or if the activity may be undertaken at a specified time, etc.

Typically, determinations reflect management decisions that apply to all AMP users (although in some cases a determination may be sector or activity specific) and are used, in addition to specific

authorisation conditions, to regulate the conduct of those activities. Under Regulation 12.03, in making a determination, the Director may take into account the possible effect of the activity including for example whether the activity might interfere with the protection or conservation of biodiversity or heritage, and whether the activity would be consistent with the relevant management plan, etc.

13 Review

This policy will be reviewed annually from the date of approval.

14 Definitions

Acceptable impacts – see Appendix B

Activity – means a regulated activity taken in an AMP.

Applicant – means a legal entity, either a person/s or corporation, seeking an authorisation to undertake an activity in an AMP.

As low as reasonably practical – see Appendix B

Australian Government – means the Government of the Commonwealth of Australia

Australian Marine Park (AMP) – means a Commonwealth marine area declared as a Commonwealth reserve under s 344(1) of the EPBC Act (as amended in accordance with s 350 of the EPBC Act).

Authorisation – means an approval given by the Director for an activity to be carried out within an AMP. Forms of authorisations include permit, class approval, licence or lease and as described within AMP network management plans.

Commercial research – means research or monitoring activities undertaken in an AMP where the primary purpose is commercial gain, whether that commercial gain is realised immediately or in the future. Examples of commercial research include, but are not limited to, benthic surveys to identify appropriate areas to install a pipeline, bioprospecting to support oil and gas exploration, etc.

Commercial research excludes research where the primary purpose is to yield scientific knowledge, with a secondary purpose to inform actions which may result in commercial gain. For example, stock assessments of commercially important fish species are NOT considered commercial research.

Commercial fishing – has the meaning given by s.390SC(1A) of the EPBC Act.

Department – means the Department of the Australian Government that administers the EPBC Act.

Director – means the Director of National Parks continuing under s.514A of the EPBC Act, including any person to whom the Director has delegated powers and functions under the EPBC Act (as relevant).



EPBC Act – means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), including any Act amending, repealing or replacing the Act.

EPBC Regulations – means the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), including any Regulations amending, repealing or replacing the Regulations.

Fish aggregating device – has the meaning given by s 4(1) of the *Sea Installation Act 1987*.

Management plan – means a legislative instrument made under Division 4, Part 15 of the EPBC Act for an AMP or network of AMPs.

Mining operations – has the meaning given by section 355(2) of EPBC Act.

Network – means the bioregional grouping of AMPs as proclaimed under the EPBC Act.

News of the day – means the reporting, by newspaper, television, radio or other electronic media, of events as they happen from time to time, such as rescue events. News of the day does not include general media items about an AMP or planned activities in an AMP.

Parks Australia – means the Division of the Department that supports the Director of National Parks.

Permit – means an authorisation for an activity by a person or persons issued in accordance with Part 17 of the EPBC Regulations.

Recreational fishing – means the taking of a marine species, including shells, not for commercial purposes and being conduct that is not commercial fishing.

Seabed – has the meaning given by s345(2) of the EPBC Act.

Sea country – means areas of the sea that Aboriginal or Torres Strait Islander groups are affiliated with through their traditional lore and customs.



Appendix A – Risk Management Matrix

Matrix used to rate risks to AMP natural values

1. DNP RISK MATRIX	CONSEQUENCE				
	Insignificant	Minor	Moderate	Major	Critical
Almost Certain	LOW	MEDIUM	HIGH	EXTREME	EXTREME
Likely	LOW	MEDIUM	MEDIUM	HIGH	EXTREME
Possible	LOW	LOW	MEDIUM	HIGH	EXTREME
Unlikely	LOW	LOW	LOW	MEDIUM	HIGH
Rare	LOW	LOW	LOW	MEDIUM	HIGH

Environmental Consequences	
Description	Definition
Critical	<ol style="list-style-type: none"> Impact is clearly affecting the nature of the ecosystem over a wide area OR impact is catastrophic and possibly irreversible over a small area or to a sensitive population or community. Impact is catastrophic from a cultural or social perspective (e.g. destruction of a sacred site) and possibly resulting in irreversible harm/damage to cultural or historic heritage values. Recovery periods of greater than 20 years anticipated OR condition of an affected part of the ecosystem irretrievably compromised.
Major	<ol style="list-style-type: none"> Impact is significant at either a local or wider level or to a sensitive population or community. Impact to cultural and heritage values significant at either a local scale (e.g. impacting a specific out-station or clan group) or wider level involving impacts on sensitive cultural or historic heritage values (e.g. historic shipwrecks involving lives lost or sacred sites). Recovery periods of 10 - 20 years anticipated.
Moderate	<ol style="list-style-type: none"> Impact on natural values is present at either a local or wider level. Impacts on cultural and heritage values at a local or wider level but unlikely to involve impacts on sensitive cultural or historic heritage values (e.g. historic shipwrecks involving lives lost or sacred sites). Recovery periods of 5 - 10 years anticipated.
Minor	<ol style="list-style-type: none"> Impact on natural values is present but not to the extent that it would impair the overall condition of the ecosystem, sensitive population or community in the long term. Impact on cultural and heritage values is present but not to the extent that it would damage the condition of cultural or historic heritage values, or sensitive cultural or historic heritage values (e.g. historic shipwrecks involving lives lost or sacred sites).



Insignificant	<ol style="list-style-type: none"> 1. No natural value impact or, if impact is present, then not to an extent that would draw concern from a reasonable person. / No impact on the overall condition of the ecosystem. 2. No cultural / heritage values impact or, if impact is present, then not to an extent that would draw concern from a reasonable person. No impact on the overall condition of cultural or historic heritage values.
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Likelihood	Indicative frequency
Almost certain	An event may occur once in 1-6 months
Likely	An event may occur once in 1 year
Possible	An event may occur once in 5 years
Unlikely	An event may occur once in 10 years
Rare	An event may occur once in 25 years



Appendix B – Assessment Terminology

1. As low as reasonably practicable

When assessing the impacts and risks of a proposed activity, the Director may consider, amongst other things, how the activity may negatively impact on the values of the AMP, and what actions may be undertaken by an applicant to reduce this impact. In considering an activity, the Director may consider the benefits associated with a risk reduction action, against the financial cost or burden that action would place on an applicant.

Reasonably practicable risk reduction actions would typically include those where the benefits to the AMP from their adoption outweigh the associated cost or burden on the applicant. If an applicant proposes to implement all available control measures where the cost is not grossly disproportionate to the environmental benefit gained, then a risk or impact may be considered as low as reasonably practicable.

2. Acceptable impacts

The decision-making prescriptions in AMP management plans require that the Director be satisfied that the impacts and risks of a proposed activity are acceptable. While a risk of impact may be reduced to as low as reasonably practicable, it may still not be considered an acceptable risk of impact.

AMPs cover a large area with a diverse range of marine environments and protect natural, cultural and heritage values. Differing marine environments have very different natural values and sensitivity to pressures caused by allowable activities and cultural and heritage values also have differing sensitivity to pressures. Acceptability of impacts and risks is highly dependent on the environmental context and the natural, cultural and heritage values of a given area. Following are some of the considerations the Director will have when considering acceptability of impacts and risks:

- a) the sensitivity or resilience of the values which may be impacted;
- b) whether the potential impacts of proposed activity are fully understood;
- c) the level of protection assigned to the potentially impacted AMP zone, including consideration of zone objectives and reserve management principles (Schedule 8 EPBC Regulations);
- d) any relevant listing or protections afforded to the potentially impacted AMP zone, through other laws or conventions, including but not limited to, those under the EPBC Act, World Heritage Convention, the Ramsar Convention and Biodiversity Convention;
- e) the implications of observing any industry standards or best practice approaches outlined in the application;
- f) the expected benefits gained for the broader Australian community from increased scientific knowledge, information for management of the AMPs and the marine environment more broadly, and social/economic outcomes from undertaking the activity; and
- g) the level of cumulative impact based on the frequency of an activity over an extended timeframe or multiple activities undertaken by several AMP users.



3. Representativeness

The national network of AMPs represents the provincial-scale bioregions recognised in Commonwealth waters, as identified by the Integrated Marine and Coastal Regionalisation of Australia Version 4.0 (IMCRA v.4.0). These bioregions form the basis for the networks of AMPs currently in place which are designed to protect representative examples of regional marine ecosystems and biodiversity. All habitats in a region (e.g. deep or shallow reefs, seagrass, rocky shoals) should be considered across the full variety of physical situations in which they occur to determine types of habitats represented within an AMP or network of AMPs.

Therefore, assessments of any activities occurring in these areas should consider:

- the uniqueness, or inversely, how widely distributed a particular ecological community, species or habitat is within an AMP or network of AMPs; and
- the proportion of that particular ecological community, species or habitat likely to be subjected to impacts from an activity.

Activities may not be authorised if they are likely to affect the representativeness of an AMP and the biotic diversity of the marine ecosystems, they were intended to be conducted in.

For some habitats that are not widely distributed (e.g. a small area of a unique seamount ecosystem, a biologically important habitat for a particular species, or a remote site with high level of endemism) even small-scale impacts could significantly affect representativeness.