

Recfishwest submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 Ningaloo Marine Park fishing rules

Secretariat
Independent review of the EPBC Act 1999
GPO Box 787
CANBERRA ACT 2601

Dear Dr Hawke

Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

Thank you for the opportunity to provide comment on the review of the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999).

Recfishwest is the peak body representing the estimated 643,000 recreational fishers in Western Australia. We have an enviable record of proactive species and environmental management. We have also played a major role in marine parks development although it is fair to say that we have had longstanding concerns about processes which exclude and then disenfranchise recreational fishers.

Recfishwest's concerns and recommendations for the review of the EPBC Act 1999 focus specifically on those pertaining to recreational fishing in Marine Parks, particularly focussing around the issue of lack of continuity between state and commonwealth water regulations.

In May 2008, Recfishwest was made aware by concerned recreational anglers of an anomaly between regulations in commonwealth and state waters in the Ningaloo Marine Park on the permitted methods of recreational fishing. Recfishwest has since attempted to resolve this issue with the Minister for the Environment, Water, Heritage and the Arts, the Hon Peter Garrett.

The anomalies between commonwealth and state regulations for the Ningaloo Marine Park relate back to the EPBC Act 1999 and we believe it is important that it is amended as part of this review. Simply put, the regulations of commonwealth waters of Marine Parks are not consistent with state based regulations creating a situation where nearly all recreational fishers in the Ningaloo Marine Park would be inadvertently breaking the law.

Recfishwest have sought legal opinion on the current regulations and has the following comments:

Comments Specific to EPBC Regulations

Part 12. Activities in Commonwealth reserves

12.18(1) Use etc of firearms, nets and other devices

1. It is unclear whether the following items are permitted on board a vessel in commonwealth waters if a recreational fisher is fishing in commonwealth waters or transporting the equipment to be used outside commonwealth waters:

- a. Gaff
- b. Knife
- c. Fishing equipment that is not permitted but still in its packaging
- d. Fish donger
- e. Rope for tying and dragging large fish such as billfish and shark onto the boat
- f. Pulley system for landing big fish
- g. Crane for landing big fish

2. There is no express mention of the above items which are commonly carried on board boats fishing in the Ningaloo Marine Park. It seems impractical for such items to be prohibited in these waters, particularly if recreational fishers are merely passing through.

3. Under this legislation a recreational angler in possession of the above equipment would be in breach of regulation 12.18(1). It is recommended the wording of this provision include the above items to be permitted in the Ningaloo Marine Park.

12.35 Fishing other than commercial fishing

1. s 3(a) The use of the word "fishing"

The definition of the word fishing in the interpretation section of the Fisheries Management Act 1991 means; (a) searching for, or taking, fish; or

(b) attempting to search for, or take, fish; or

(c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish; or

(d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or

(e) any operations at sea directly in support of, or in preparation for, any activity described in this definition; or

(f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat; or

(g) the processing, carrying or transshipping of fish that have been taken.

By the application of this definition of fishing it is unclear if activities such as scuba diving, whale watching and whale shark watching constitutes searching for fish. This would have significant implications for eco-tourism activities in commonwealth Marine Parks if under the interpretation deemed to be fishing and illegal.

2. s 3(b)(i) The use of the word "carried":

It is unclear whether carried includes transporting the mentioned fishing equipment through commonwealth waters.

By the application of *Expressio unius est exclusio alterius* which was raised in *Dean v Wisengrund* 1955 2 QB 120, the express mention of carrying equipment draws the attention to the absence of transporting equipment, therefore through the interpretation of the provision in this manner the transportation of the mentioned equipment could be allowed in commonwealth waters.

3. s 3(b)(ii) The use of the phrase "intending to fish":

It is not clear whether a person can be in possession of this equipment if they are not intending to fish in commonwealth waters but simply passing through the waters to fish state waters.

By the application of *Expressio unius est exclusio alterius* which was raised in *Dean v Wisengrund* 1955 2 QB 120, the express mention of intending to fish draws the attention to the absence of transporting equipment, therefore through the interpretation of the provision the transportation of the mentioned equipment could be allowed in commonwealth waters.

4. s 3(b)(iv) The use of the word "take":

The definition of the word take in the interpretation section of the *Fisheries*

Management Act 1991 means to catch, capture, take or harvest and therefore is unclear whether take includes the catch and release of fish.

By the application of the literal approach in statutory interpretation which was raised in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* 1920 28 CLR 214, words in statutes are giving their ordinary meaning no matter if any absurdities arise. Therefore the word take, which means to gain possession of, has a different meaning to the phrase catch and release.

By the application of *Expressio unius est exclusio alterius* which was raised in *Dean v Wisenrund* 55 2QB 120, the express mention of take draws the attention to the absence of the catch and release of fish, therefore through the interpretation of the provision the transportation the above method could be allowed in commonwealth waters.

5. s 4(b) The use of the word "attract":

It is unclear whether this includes devices such as teasers which are used to attract fish. If so then a large majority of recreational fishers in these waters would be in breach of the provision.

6. s 4(b) The use of the term "single hook":

It is unclear whether the following the fishing equipment is regarded as a single hook:

- a. Treble hooks
- b. Double hooks
- c. A squid jig which has a crown or multiple crowns and hooking features on the top.
- d. Ganged hooks

The wording on this provision needs to clearly define whether the above equipment is permitted in Marine Parks. Further to this Recfishwest believes that the commonwealth legislation should match the relevant state legislation in adjacent waters controlling legal methods of fishing.

Summary

Recfishwest believes the EPBC Regulations are poorly written in the case of permitted recreational fishing activities and provide no consistency between state and commonwealth waters. As these regulations stand we will have a situation whereby rules differ significantly between state and commonwealth waters in

Marine Parks. Recfishwest have had discussions with a number of recreational fishers indicating that almost every angler in the Ningaloo Marine Park would be in breach of these rules.

Recfishwest believes that state fishing laws, as developed and agreed to as part of the state management of fisheries and agreed to as part of the Offshore Constitutional Settlement should apply in the commonwealth Marine Parks.

At the very least, Recfishwest believes provisions should be made for recreational fishers to traverse in possession of fishing equipment if they are not intending to fish in commonwealth waters but simply passing through the waters to fish state waters. However, preference should be given to applying state based fisheries regulations in commonwealth Marine Parks.

State fishing laws are specifically tailored to the sustainability requirements of the species present in the area, are readily understood and are supported by recreational fishers, and as such are much more appropriate than general management restrictions which have no management basis for the areas and species. The current situation in the Ningaloo Marine Park where recreational fishing rules are vastly different between commonwealth and state waters just leads to confusion among fishers as they move between adjacent areas of commonwealth and state jurisdiction.

Recfishwest requests that the review gives full and careful consideration to this important issue for recreational fishers. Should you require any further information or clarification please do not hesitate to contact me on (08) 9246 3366.

Yours sincerely

Frank Prokop
Executive Director

18 December 2008

CC Hon Norman Moore MLC, Minister for Mines and Petroleum; Fisheries; Electoral Affairs

Hon Donna Faragher MLC, Minister for Environment; Youth

Hon Peter Garrett MP, Minister for the Environment, Heritage and the Arts

Mr Stuart Smith, Chief Executive Officer, Department of Fisheries

Mr Len Olyott, Chief Executive Officer, Recfish Australia

Mr Doug Bathgate, Chairman, RFAC

Letter advising changes to Recreational fishing regulations in Ningaloo Marine Park (Commonwealth Waters)

Department of the Environment, Water, Heritage and the Arts, Our reference: 2009/03640

Mr Frank Prokop
Executive Director
Recfishwest
PO Box 34
NORTH BEACH WA 6920

Dear Mr Prokop

Re: Recreational fishing regulations - Ningaloo Marine Park (Commonwealth Waters)

I am writing to inform you of changes to recreational fishing rules in Ningaloo Marine Park (Commonwealth Waters) that will have effect after the Ningaloo Marine Park (Commonwealth Waters) Management Plan expires on 2 July 2009. The Department has undertaken an assessment of the recreational fishing rules in the Commonwealth component of the Park, and whether application of the West Australian (WA) recreational fishing regulations are consistent with the Ningaloo Marine Park (Commonwealth Waters) IUCN Category (II - 'National Park').

Following this assessment, the Department has developed a framework for managing activities in Ningaloo Marine Park (Commonwealth Waters), including recreational fishing, through interim management arrangements in the absence of a management plan. This framework provides flexibility in the application of the Environment Protection and Biodiversity Regulations 2000.

On expiry of the management plan, recreational fishing in Ningaloo Marine Park (Commonwealth Waters) will be undertaken in accordance with the WA recreational fishing rules. Previous restrictions under the management plan, including restrictions on gear, bait and cleaning of fish, will no longer apply.

To ensure recreational fishing rules in both the state and Commonwealth waters of Ningaloo Marine Park remain consistent and in accordance with the management needs of the Park, the rules relating to recreational fishing in the Commonwealth Waters will be reviewed approximately every six months.

In order to achieve a longer term solution to this issue, the Department is working

with the Western Australian Departments of Fisheries and Environment and Conservation and I will keep you informed as this work progresses.

Changes to the rules that apply to recreational fishing in the Commonwealth waters of Ningaloo Marine Park will be communicated to recreational fishers and other stakeholders through forums, letters and literature. Forums are being held in Exmouth on 25 and 28 May (see attached flyer).

If you would like to discuss this matter with me, please contact me on (03) 6208 2930.

Yours sincerely,

Rowan Wylie

Director

Tropical West Marine Conservation

15 May 2008

Cc Mr Len Olyott, CEO, Recfish Australia

Mr Craig Leatt-Hayter, Chairman, Recfishwest

Paula Tomkins, DEWHA

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<http://www.environment.gov.au>

Director of National Parks, Commonwealth Department of the Environment, Water, Heritage and the Arts

Ningaloo Marine Park (Commonwealth Waters)

Public Notice Invitation to Stakeholder Meeting

All interested people are invited to attend a forum regarding Ningaloo Marine Park's Commonwealth waters.

The forum will cover the following:

- Ongoing management of Ningaloo Marine Park (Commonwealth Waters) following expiry of the current Management Plan (expiry date is 2 July 2009).
- Recreational fishing in the Park's Commonwealth waters.

- Marine bioregional planning in Australia's North-west region.

Two sessions will be held:

Date: Monday 25 May 2009

Time: 6-8pm

Venue: Exmouth TAFE College

Date: Thursday 28 May 2009

Time: 6-8pm

Venue: Exmouth TAFE College

For further information please contact the Ningaloo Marine Park (Commonwealth Waters) Manager on (02) 6274 1111 or email mpa@environment.gov.au

Update for visitors to Ningaloo Marine park (Commonwealth waters) May 2009

Ningaloo Marine Park includes a Commonwealth component and state component. The Commonwealth component of the park starts 3 nautical miles from shore. Activities are managed differently in the state and Commonwealth components of the park in accordance with the relevant legislation. The following information relates specifically to the Commonwealth component of the marine park.

Management Plan Expiry

The Ningaloo Marine Park (Commonwealth Waters) management plan, which prescribes how activities are managed, will expire on 2 July 2009. The development of a new management plan is being scheduled to coincide with the implementation of marine bioregional planning, an Australian Government process that involves the identification of new Commonwealth reserves around Australia, including the north-west marine region in which Ningaloo Marine Park (Commonwealth Waters) is located. For more information on marine bioregional planning: www.environment.gov.au/coasts/mbp

The next management plan for Ningaloo Marine Park (Commonwealth Waters) will be prepared in line with the declaration of the new representative network of Commonwealth reserves in the north-west region so as to minimise impositions on stakeholders, maximise efficiencies and ensure consistency in management of the new network.

Stakeholders will be consulted during the marine bioregional planning process, and in the development of the new management plan.

Information for Visitors and Reserve Users

Until a new management plan is finalised, Ningaloo Marine Park (Commonwealth Waters) will be managed under interim arrangements. These arrangements arise from the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and its Regulations (EPBC Regulations) and are consistent with the reserve's "National Park" category.

Recreational fishing

Recreational fishing will continue to be allowed in Ningaloo Marine Park (Commonwealth Waters). Following expiry of the management plan on 2 July 2009, recreational fishing rules will be consistent with recreational fishing rules in the state waters of the park. Previous restrictions under the management plan, including restrictions on gear, bait and cleaning of fish, will no longer apply. Recreational fishing will be managed under a general approval issued by the Director of National Parks. Individual recreational fishers will not be required to apply for approval.

The approval will require that recreational fishers comply with:

- The legal lengths, catch limits, permitted gear and other requirements that apply to marine recreational fishing under the Western Australian Fish Resources Management Act 1994 and relevant regulations, policies, plans, notices and orders made under that Act, and
- Any determinations made by the Director of National Parks under Regulation 12.35 of the EPBC Regulations.

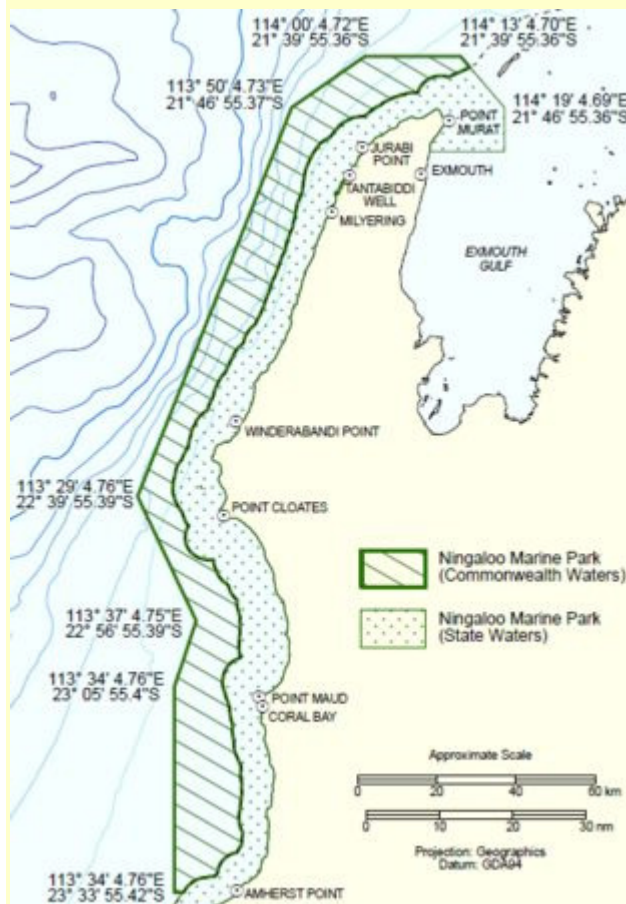
To ensure recreational fishing rules in both the state and Commonwealth Waters of Ningaloo Marine Park remain consistent, the recreational fishing approval in the Commonwealth Waters will be reviewed periodically. When updated, the approval will be advertised in local newspapers and through local distributors and will be made available on the department's website:

www.environment.gov.au/coasts/mpa/ningaloo/index.html

Where possible, stakeholders will be informed directly.

Further Information

Further information will be produced in a comprehensive visitor information document. This document will be available prior to the expiry of the management plan from the WA Department of Environment and Conservation and WA Department of Fisheries in Exmouth and on the web:
www.environment.gov.au/coasts/mpa/ningaloo/index.html



Map of Ningaloo Marine Park (Commonwealth Waters)