

# Interim MPA Compliance Policy



This Interim NSW Marine Parks Authority Compliance Policy applies to the enforcement of the provisions of the *Marine Parks Act 1997* and *Marine Parks Regulation 1999* and Marine Park zoning plan regulations.

This policy stands alongside the National Park and Wildlife Prosecution Guidelines, which apply to National Parks and Wildlife and Threatened Species legislation, and the Protection of the Environment Operations Act. The Policy also complements the Department of Primary Industries (DPI) Compliance Policy and Guidelines, which apply to the enforcement of the *Fisheries Management Act 1994* and *Fisheries Management (General) Regulation 2002*.

## 1. Background

Stakeholder compliance with the rules and regulations within individual marine parks is critical for the NSW marine park system to achieve its overarching goals of conserving natural heritage and sustainable activities. Without effective compliance the best planning, design, management and science will not achieve their desired results.

It is recognised that enforcement involves the application of a broad range of approaches, using incentives and disincentives, by different agencies (working together) to alter stakeholders behaviour with respect to marine parks. Actions to foster compliance in marine parks will change over time, as public awareness is improved and compliance risks and targeted and reduced.

Compliance priorities also differ on a park by park basis, depending on the particular phase of planning and management. For example, in the initial phase of an establishing marine park or a marine park that has had boundary or zoning changes there would be greater emphasis on public education, outreach and visible enforcement to help stakeholders become familiar with boundaries and regulations.

As benefits and awareness of marine parks become understood, the Marine Parks Authority will encourage partnership and ownership to achieve community self-compliance.

## 2. Goals and Principles

To conserve marine biological diversity and marine habitats, the Marine Parks Authority aims to achieve optimal compliance in NSW marine parks and has adopted three supporting goals:

- 1 to maximise voluntary compliance (*incentives*)**
- 2. to create an affective deterrent against illegal activities (*disincentives*)**
- 3. to measure, review and improve compliance operations (*feedback*)**

In pursuing this goal, the Marine Parks Authority has adopted the following principles:

- We will promote legitimacy, fairness, and viability of marine park management practices;
- We will work with park users to develop high levels of self-regulation and compliance through education and promotional activities;
- We will adopt a cooperative compliance approach and build partnerships with the community and stakeholders;
- Our compliance efforts will use a risk management approach to maximise value for money for NSW taxpayers in conserving the marine parks environment;
- Our enforcement actions will be transparent, equitable, fair and in proportion to the magnitude of alleged offences;
- We will work with stakeholders in continuously seeking improvements to marine parks law and regulations;
- We will be sensitive to social and cultural issues in pursuing compliance with laws and regulations.

### 3. Planning

The principles proposed above need to be applied in developing enforcement strategies to ensure a balance of resourcing between voluntary compliance and enforcement.

A 'risk assessment' approach has been adopted for marine park enforcement planning, consistent with the NSW Better Regulation Office guidelines. This risk-based approach involves five steps: 1) identification of the risks of non-compliance, 2) analysis of these risks, 3) prioritisation, 4) identification and selection of compliance measures and 5) planning of implementation.

The Authority will utilise risk identification and assessment to develop compliance profiles and to determine priorities and appropriate targeting strategies. Reducing risks over time will be one of the primary planning objectives. Stakeholders with high risk profiles will be actively engaged by the Marine Parks Authority to find solutions to minimise risks and enforcement action.

Planning will incorporate specific and targeted enforcement strategies that will be tailored for the risk profile and desired compliance outcomes.

The Authority will prepare State level and individual marine park compliance plans. (This commitment is consistent with that made by the Authority in its compliance agreement between the Department of Environment, Climate Change and Water NSW (DECCW) and DPI Fisheries).

The State compliance plan will identify priorities for state level compliance outcomes over the corporate planning period (3-4 year duration). The Authority recognises that prevention strategies are the most positive and cost effective way of dealing with unlawful activity and, accordingly, will give specific attention and status in this plan. These strategies include communication measures and stakeholder interaction to improve self compliance and

remove barriers to compliance. Other strategies include coordination with relevant agencies, introduction of new technologies, legislative improvement, allocation of resources and state performance reporting

The State compliance plan focuses on strategic and complex issues that may take several years to see outcomes, for example land-based pollution compliance adjacent to marine parks; the management of high risk developments; industry partnerships and organised events policy and guideline development.

Individual marine park compliance plans will be prepared on an annual basis and implement state plan objectives and annual priorities, but would include local risk evaluation, and targeted strategies to achieve local compliance outcomes. Individual marine park plans will include the annual marine park compliance monitoring (tactical plan) program, which would detail surveillance and patrol activities and spatial and temporal targets, in order to observe use activities both within and outside marine park boundaries. Deciding what is reasonably practical to control risks will involve the exercise of local judgement.

DPI and DECCW have agreed to jointly develop a state-wide marine parks compliance plan that will guide compliance priorities and resource utilisation. The agencies have also agreed to integrate, as far as practicable, marine parks and DPI compliance planning at DPI zone and marine park level; and to jointly develop, annual compliance plans for individual marine parks.

#### **4. Interagency cooperation**

Enforcement requires an integrated and coordinated approach among the various agencies responsible for users in and adjacent to marine parks.

This Authority supports the development of relevant agency partnerships to support joint planning, patrols and use of intelligence. In this regard the authority has already formally recognised the advantages of developing cooperative compliance and enforcement strategies with Fisheries, particularly in regard to sharing resources, skills and information; and co-ordinating activities. To this end, both DECCW and DPI have agreed to develop, wherever possible, integrated and consistent compliance arrangements for marine parks and other waters.

The Authority supports the development of similar agreements with NSW Maritime, Dept of Planning, and Local Councils and, where relevant, the Commonwealth (e.g. defence and Environment and Heritage).

Enforcement planning and liaison will also consider National Parks and Wildlife Service estate land use issues, and associated management and operational planning requirements. The Authority is committed to operate in accordance with DECCW policies relating to Protection of the Environment Operations Act enforcement and National Parks and Wildlife Act enforcement.

#### **5. Enforcement Actions**

##### **Exercising discretion**

The Authority will exercise discretion in the context of their regulatory responsibilities for administration and the enforcement of the Marine Parks Act and Regulations. It is

acknowledged that discretionary powers must be carefully applied and that subjectivity must be removed from such decision making. In this regard the Authority has adopted the NSW Ombudsman requirements for discretional decisions.

Additionally, the Authority may choose not to take action if the contravention met *all* of the following criteria:

- There is no potential for environment harm
- The offence is not a designated serious offence under section 17A of the *Marine Parks Act 1997*
- The contravention is a reasonable oversight on the part of the offender or is out of the reasonable control of the offender
- The offender does not have a history of contravening the *Marine Parks Act 1997*.

### **Criteria for Enforcement**

The Authority has adopted the following standard 'enforcement factors' to assist in determining the need and type of enforcement action to be considered.

Enforcement Factors include:

- Objectives of the *Marine Park Act 1997* and zoning plans.
- Seriousness of the harm caused to the environment or other users of the park.
- Compliance with formal request or permit.
- Level of culpability.
- History of offender.
- How the matter was reported and length of time since the incident.
- Cooperation and voluntary actions by the persons to mitigate problems caused.
- Cost of the contravention, cost of response action.
- Standard of evidence.
- Likelihood of contravention continuing or being repeated.
- Prevalence of the type of contravention.
- Community expectation of the breach.
- Appropriate response to ensure effective deterrence and best environmental outcome.
- Precedent; and enforcement approach adopted for similar breaches.
- Age, intelligence, antecedents, background, physical or mental health of the offenders or witnesses.

### **Enforcement Measures and Practice**

The decision to take enforcement action will be based using the principles set out in this policy and consideration of enforcement factors list above.

The Authority is committed to the development and maintenance of Marine Park Enforcement Guidelines that provide guidance to marine park rangers in exercising their powers under the Marine Parks Act 1997. This Guideline would include operational information for the following:

- Regulatory directives and procedures
- Enforcement recording and reporting
- Investigation of unlawful activity
- Use of administrative enforcement measures
- Seizure protocol
- Confidentiality
- Sharing of information
- Prosecution
- Media and public communication - department contacts

During an investigation, authorised marine park rangers will gather evidence of the incident in order to establish whether an offence has occurred and the identity of the person(s) who may be responsible. This evidence may take the form of videos, photographs, samples and physical evidence, witness statements and records of interview.

Authorised marine park rangers will undertake their investigations in a professional and ethical manner that is:

- objective, fair and impartial;
- consistent with the presumption of innocence;
- within their delegated authority;
- in accordance with the law; and
- respectful of individuals.

Authorised marine park rangers will abide by the DECCW Code of Ethics and Conduct that all officers are required to comply with. Compliance decisions will be made in accordance with Public Sector guidelines and to the highest ethical and professional standards. Any approaches to bribe, influence or engage officers in corrupt or unlawful behaviour will be reported immediately and will be investigated.

If an investigation determines that an offence under the *Marine Parks Act 1997* and Regulations may have occurred, then enforcement action will be considered using administrative, civil or criminal actions.

**Administrative Actions** – where investigations and surveillance indicates minor contraventions.

Measures include:

- Written caution notices

- Requiring a person to leave an area
- Seizure of items, e.g. catch, gear and vessels
- Infringement notices (for prescribed offences)
- Varying, revoking, or imposing further conditions on permits
- Suspending or cancelling permits
- Retaining bonds or securities

**Civil Action** - Where investigations produce evidence of a serious civil contravention, for example contravention of the *Marine Parks Act 1997* involving environmental harm, the Authority will seek appropriate sanctions through local courts or the Land and Environment Court.

Civil contravention would generally involve a least one of the following offence attributes:

- It involves blatant disregard for or significant degree of indifference to marine park laws;
- It resulted or had the potential to result in significant real harm or detriment to the community or environment, cultural heritage, resources, assets or well being of marine park users;
- Community expectation that the matter will be dealt with by way of civil action;
- It is of such a nature or magnitude that it is important to deter future contravention.

Prosecutions will be initiated, consistent with DECCW prosecution guidelines and principles outlined in this policy: where there is evidence of prima facie breaches of the *Marine Parks Act 1997*, and on a case by case basis.

**Criminal Action** – Where investigations have produced evidence that a serious offence has been committed that involves a notable degree of criminality, or previous civil responses to contraventions have not resulted in compliance, the Authority, in accordance with DECCW policies may take proceedings to the DPP for criminal charges to be laid.

## 6. Resourcing and Training

The Authority recognises the need to employ and maintain professional trained staff in each marine park. The Authority is committed to ensure appropriate training of authorised marine park rangers to undertake the full range of compliance strategies and tasks required in marine parks.

Providing adequate human resources both in and across marine parks will be subject to annual planning outcomes and available funding.

## 7. Record Keeping

The Authority is committed to developing an effective complaint handling system and aims to ensure that a full and proper record of complaints is recorded.

In respect to recording enforcement actions, the Authority has agreed to utilise the DPI Nautilus compliance database, including aspects of Program Activity Reporting (PARS), for operations and offence and prosecution reporting.

### **8. Measuring Performance and Reporting and Review**

The Authority considers it essential that the impact of compliance strategies, the methods used and the operation of this policy are monitored effectively.

Measuring performance and compliance effort is needed for feedback to all aspects of this compliance policy and planning, as well as allocating resources and implementing training programs. The Authority aims to develop standard compliance performance indicators to assist in this task.

The Authority has made a commitment to develop integrated arrangements with DPI Fisheries (using Nautilus) for reporting compliance outcomes in marine parks, in order to provide consistent and comprehensive reporting to government and other key stakeholders

*Approved by the Marine Parks Authority at meeting 43 on 27 November 2008*

