

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025

Legislative Authority

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) provides for the protection of the environment and conservation of biodiversity, including the management of Commonwealth reserves.

Section 366 of the EPBC Act provides that the Director of National Parks (the Director) must prepare management plans for each Commonwealth reserve for which there is not a Board. Subsection 370(3) of the EPBC Act provides that the Minister may approve a management plan for a Commonwealth reserve. Subsection 371(1) provides that the management plan is a legislative instrument made by the Minister on the day the plan is approved.

Purpose

The objectives of the *Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025* (Management Plan) are to provide for:

- the protection and conservation of biodiversity and other natural and cultural values of marine parks in the South-east Network
- ecologically sustainable use and enjoyment of the natural resources within marine parks in the South-east Network, where this is consistent with the objective above.

The Management Plan also sets out programs, desired outcomes, goals and actions that the Director will implement during the life of the plan to work toward the dual objectives of biodiversity conservation and ecologically sustainable use.

The Management Plan was made in accordance with section 368 of the EPBC Act and was approved by the Minister for the Environment and Water in accordance with section 370 of the EPBC Act.

In accordance with section 367 of the EPBC Act, the Management Plan:

- assigns International Union for the Conservation of Nature (IUCN) categories to South-east Marine Parks and zones;
- describes how the reserve and its zones will be managed;
- describes how the natural features of the reserve and its zones will be protected and conserved;
- details what activities can and cannot be carried out in the reserve, and which activities are subject to regulation; and
- indicates how the plan takes into account of Australia's obligations under international agreements.

Background

The South-east Marine Parks Network (the South-east Network) consists of 14 Commonwealth reserves that lie off the coast of Victoria, South Australia and Tasmania, covering 701 927 square kilometres. The Commonwealth reserves that form the South-east Network were declared by Proclamation under section 344 of the EPBC Act in June 2007 and came into effect on 1 September 2007¹. The park names were amended by a Proclamation made under section 350 of the EPBC Act on 9 October 2017 to change the name of the reserves from “Commonwealth Marine Reserve” to ‘Marine Park’. The Macquarie Island Marine Park was expanded on 01 July 2023 through a new Proclamation.

Management of the South-east Network is the function of the Director under the EPBC Act.

The South-east Network includes the following marine parks:

- East Gippsland Marine Park
- Beagle Marine Park
- Flinders Marine Park
- Freycinet Marine Park
- Huon Marine Park
- South Tasman Rise Marine Park
- Tasman Fracture Marine Park
- Zeehan Marine Park
- Franklin Marine Park
- Boags Marine Park
- Apollo Marine Park
- Nelson Marine Park
- Murray Marine Park
- Macquarie Island Marine Park

The marine parks of the South-east Network were established to protect and maintain marine biodiversity, contribute to the National Representative System of Marine Protected Areas and to help ensure the long-term ecological viability of Australia’s marine ecosystems. The conservation values that the marine parks help to protect include:

- ecosystems, habitats, communities, species and sea-floor features found within the provincial bioregions of the South-east marine region
- ecological features with high biodiversity value, species richness and endemism
- First Nations values
- National and Commonwealth heritage areas, underwater cultural heritage values and parts of a World Heritage Area
- a number of species listed as endangered or vulnerable under Commonwealth legislation or international agreements
- habitats important for protected species

Consultation

¹ Note that Macquarie Island Marine Park was first proclaimed in 1999, as was the Tasmanian Seamounts Marine Reserve, which was subsequently fully incorporated into Huon Marine Park in 2007.

On 20 March 2023, in accordance with subsection 368(2) of the EPBC Act, a Notice of Intent was published in the *Australian Government Gazette*, a national newspaper and relevant State circulating newspapers and placed on the website of the Department of Climate Change, Energy, the Environment and Water (the Department). The Notice of Intent invited comment on the Director's proposal to prepare a draft management plan for the South-east Marine Parks Network and for an area² proposed to be added to the then Macquarie Island Marine Park. This comment period closed on 22 May 2023, which met the minimum 30-day requirement in subsection 368(2)(d) of the EPBC Act.

A total of 13,529 campaign submissions and 40 unique submissions were received. The Director prepared a draft management plan, taking into account the comments received following the Notice of Intent.

The draft Management Plan for the South-east Network was released for public comment on 11 October 2024. In accordance with subsection 368(5) of the EPBC Act, the Director published a notice inviting comments on the draft Management Plan in the *Australian Government Gazette*, a national newspaper and relevant State circulating newspapers. Copies of the draft Management Plan were made available through the Department's Have Your Say consultation platform and on the Department's website. Comments on the draft plan closed on 14 November 2024, which met the minimum 30-day requirement in subsection 368(5)(e) of the EPBC Act.

A total of 18,400 campaign submissions and 90 unique submissions were received. Most of the submissions, particularly from environment groups and scientific sectors were supportive, though some sought further increases in protection. Some submissions from fishers and the offshore mining and energy sector raised concerns about impacts on existing users. The Director considered all comments received and revised the draft management plan to incorporate some of that feedback. These changes included:

- a) Zoning changes for 4 marine parks:
 - i. Beagle – a reduction in the proposed new National Park Zone (IUCN II) to reduce impacts on the Commonwealth Gillnet Hook and Trap shark fishery. The catch displaced by the consultation zoning was already small, less than 1% of the fishery's Total Allowable Catch and the change reduces that by 25%.
 - ii. Flinders – moving the proposed new Habitat Protection Zone (IUCN IV) westward to support commercial fishing interests, while reducing the overall size of this zone and ensuring it remains over deep abyssal areas.
 - iii. Freycinet – rezoning approximately two thirds of the proposed new National Park Zone (IUCN II) to Habitat Protection Zone (IUCN IV) to reduce impacts on recreational fishers and commercial pelagic fishers.
 - iv. Zeehan – shifting the boundary of the proposed new National Park Zone (IUCN II) northward, in response to broad public support for the position of no new oil and gas activities in the Network, to improve protection of the values found in the park and decisions by companies not to proceed with proposed activities in the area.

² The expansion to the Macquarie Island Marine Park was proclaimed in July 2023 and is now part of the South-east Network and covered by this management plan.

- b) Changes to the Management Plan in response to First Nations feedback:
- i. Inclusion of a First Nations-authored statement, “*Not without us, if it’s about us*”, written by the South-east Saltwater Council which represents multiple groups in the region. The statement reflects the Council’s views and aspirations but does not constitute their endorsement of the Management Plan.
 - ii. Text changes to better acknowledge the deep connections and knowledge Traditional Owners bring to managing the Sea Country of the South-east Network.
 - iii. New actions that more clearly articulate the Director’s commitment to work in partnership to better manage Sea Country and protect First Nations values in the marine parks.
- c) Various minor editorial changes throughout the document to clarify intent, address errors and improve readability.

Additional consultation took place to inform the development of the Management Plan. This included direct engagement with the people most affected by the Management Plan, such as representatives from the commercial fishing sector, the recreational fishing sector, the conservation sector, mining, offshore wind, and state government agencies in Victoria, South Australia and Tasmania.

The Department of Industry, Science and Resources, National Offshore Petroleum Safety and Environmental Management Authority, Offshore Infrastructure Regulator, Australian Space Agency, Department of Agriculture, Fisheries and Forestry, Australian Fisheries Management Authority, Australian Antarctic Division, Department of the Prime Minister and Cabinet, The Treasury, Department of Finance, National Indigenous Australians Agency, Department of Foreign Affairs and Trade, and Department of Defence were also consulted during development of the Management Plan.

Documents incorporated by reference

The following documents are incorporated into the Management Plan in accordance with subparagraph 14(1)(b)(i) of the *Legislation Act 2003*:

- International Convention for the Prevention of Pollution from Ships (the Convention)

The Convention is incorporated as in force at the time the Management Plan commences.

The Convention deals with preventing and minimising the discharge of ship-generated pollution into the sea. Regulation 12.14 and 14A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) make it an offence to dump waste from a vessel in an Australian Marine Park, unless done in accordance with a management plan in effect for that Marine Park or if some other exemption set out in Division 12 of the EPBC Regulations applies.

The Management Plan, at section 4.3.1.7, provides that waste from the normal operations of vessels to which the Convention applies, may be discharged from those vessels in all zones in the Network, other than Sanctuary Zones, in accordance with the requirements of the Convention.

The Convention is freely and readily available to persons interested in or affected by the Management Plan from the United Nations Treaty Collection at:
<<https://treaties.un.org/pages/showDetails.aspx?objid=0800000280291139>>.

Impact and Effect

Regulatory impacts to individuals or businesses from this Management Plan have been minimised where possible, while still achieving the desired goals for increased protection.

The Office of Impact Analysis (OIA) advised that a detailed analysis was not required under the Australian Government's Policy Impact Analysis Framework (OIA reference: OIA24-08261).

Details and Operation

Section 1.1 of the Management Plan provides that:

- The title of the instrument is the *Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025*.
- The instrument comes into effect the day after it is registered on the Federal Register of Legislation. The instrument will cease to have effect 10 years after commencement under s373 of the EPBC Act.
- The glossary provides the meaning of certain words, acronyms and expressions used.
- The instrument is made under subsections 370(3)(b)(i) and 371(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Management Plan is subject to disallowance under section 42 of the Legislation Act.

Further details of the Management Plan are set out in Attachment A.

Human Rights

This legislative instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025*

The Management Plan consists of four Chapters, four schedules and a glossary.

Chapter 1 Introduction:

Outlines the context and approach to managing Australian Marine Parks, describes changes from the previous management plan and describes how the plan will be implemented in partnership with Traditional Owners.

Chapter 2 – The South-east Marine Parks Network:

Outlines the values and pressures of the South-east Marine Parks Network.

Chapter 3 – Approach to management

Provides an overview of marine park management, ways of working and describes the desired outcomes, management programs, goals and actions for the South-east Marine Parks Network.

Chapter 4 – Zones and rules of the Network

Provides details for the management of the South-east Marine Parks Network, including zoning design, prescriptions for managing activities and arrangements for authorising use.

Schedule 1

Provides a summary for each marine park, including a description of values, social and economic benefits, other protected place arrangements and zoning maps with coordinates.

Schedule 2

Includes a summary of relevant legislation, including the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection and Biodiversity Conservation Regulations 2000*.

Schedule 3

Coordinate descriptions for the zones within each marine park.

Schedule 4

Lists supporting information and data sources used in preparing the Management Plan.

Glossary

Lists terms and words used in the Management Plan, including references to certain words that are defined in the EPBC Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and associated Regulations prohibit certain activities from occurring in Commonwealth reserves unless permitted by a management plan prepared in accordance with section 368 of the EPBC Act.

The *Environment Protection and Biodiversity Conservation (South-east Marine Parks Network Management Plan) Instrument 2025* allows for management, recreational and commercial activities to occur that would otherwise be restricted under EPBC Act. It also sets out programs and actions that the Director of National Parks (the Director) will implement during the life of the plan to work toward the dual objectives of biodiversity conservation and ecologically sustainable use.

Human Rights Implications

This Legislative Instrument engages with the following human rights:

- The right to self-determination under Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to freedom of movement under Article 12 of the ICCPR;
- the right to privacy and reputation under Article 17 of the ICCPR;
- the right to enjoy and benefit from culture under Article 15(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to self-determination

The rights of peoples to freely determine their political states and freely pursue their economic, social and cultural development is contained in Article 1 of the ICCPR and Article 1 of the ICESCR. This right is a collective right applying to groups of peoples, in contrast to rights to culture which protect the rights of individuals within a group.

The CCPR General Comment No. 12: Article 1 (Right to Self-determination) has been interpreted by the Parliamentary Joint Committee on Human Rights: Guide to Human Rights (2015) as requiring the state to give access to and to ensure representation of Indigenous

groups in the democratic process, particularly in relation to decision-making on issues affecting traditional land and economic activities.

The preparation of this Instrument positively engages the right to self-determination through:

- consultation and consideration of the views of stakeholders and First Nations on their economic, cultural and social aspirations for marine parks;
- including a First Nations-authored statement reflecting the views and aspirations of groups represented by the South-east Saltwater Council;
- including principles for partnership that reference self-determination, First Nations values, and clear actions to support collaboration with Traditional Owners in managing the South-east Network;

Right to freedom of movement

The right to liberty of movement is contained in Article 12 of the ICCPR.

In order to achieve the objectives of the Legislative Instrument it is necessary to restrict some access and uses that may impact on the natural and cultural values in certain areas of the marine parks. Limitations on access and use of marine parks are reasonable, necessary and proportionate and sufficiently precise to manage impacts on natural and cultural values.

The Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, home or correspondence. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

The United Nations Human Rights Council (UNHRC) has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportionate to the end sought and be necessary in the circumstances of any given case.

The UNHRC has not defined 'privacy', but it is generally understood to comprise of a freedom from unwanted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The collection and sharing of information (public or otherwise) may be considered to engage and offend the right to privacy.

The Legislative Instrument allows the Director in some instances to require users of the marine parks to provide information about the activities they conduct within the marine parks. This potentially includes information such as the location of an activity or number of people undertaking an activity. The right to privacy is not absolute, and any requests for information are used to ensure compliance with the requirements of the Management Plan and to inform future management arrangements. The information collected will be handled and managed in accordance with the Commonwealth Privacy legislation.

Right to enjoy and benefit from culture

Article 15(1)(a) of the ICESCR protects the right of all persons to take part in cultural life, and Article 27 of the ICCPR protects the right of persons belonging to ethnic minorities to enjoy their own culture.

The right to culture as it relates to minority groups has been interpreted by the Parliamentary Joint Committee on Human rights: *Guide to Human rights* (2015) as particularly applying to Indigenous communities and references the positive steps the State may be required to take to protect the identity of a minority and the rights of its members to enjoy and develop their culture.

The Legislative Instrument positively engages this right by seeking to partner with First Nations people to manage Sea Country in the marine parks, and to support interested stakeholders and local communities in various aspects of management, including through ecologically sustainable use of the natural resources within the marine parks. The Legislative Instrument sets out how it will protect First Nations and cultural values, incorporates a First Nations articulation of these values, and includes principles for partnership. Principle 5 of the partnership principles seeks to, “Maximise opportunities for First Nations people to engage in self-determined cultural practices, and to enjoy the management and use of their Sea Country”.

Conclusion

The Management Plan is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate to the goals of the Legislative Instrument.

The Hon Tanya Plibersek, Minister for the Environment and Water