

South Australia

Marine Parks (Zoning) Regulations 2012

under the *Marine Parks Act 2007*

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Legislative history

1—Short title

These regulations may be cited as the *Marine Parks (Zoning) Regulations 2012*.

2—Commencement

These regulations will come into operation 4 months after the day on which they are made (see *Subordinate Legislation Act 1978* section 10AA).

3—Interpretation

In these regulations, unless the contrary intention appears—

Aboriginal tradition means traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

Act means the *Marine Parks Act 2007*;

algae means non-vascular aquatic vegetation that can be seen without the aid of a microscope;

aquaculture has the same meaning as in the *Aquaculture Act 2001*;

dredge means remove solid matter from the bed of marine waters or inland waters by means of digging or suction apparatus;

emergency means an event that causes, or threatens to cause—

- (a) the death of, or harm to, a person; or
- (b) the destruction of, or damage to, property; or

- (c) a disruption to essential services or to services usually enjoyed by the community; or
- (d) harm to the environment;

fishery authority means a licence or permit under the *Fisheries Management Act 2007* or a statutory authorisation under the law of the Commonwealth as applied as a law of the State by the *Fisheries Management Act 2007*;

fishing activity has the same meaning as in the *Fisheries Management Act 2007*;

hauling net has the same meaning as in the *Fisheries Management (General) Regulations 2007*;

ILUA means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth;

motorised vessel means a vessel that has a motor or engine as its principal source, or 1 of its principal sources, of motive power;

motorised water sport means—

- (a) any activity involving the driving of a motorised vessel other than in a straight line, including—
 - (i) driving in a circular pattern; or
 - (ii) weaving or diverting; or
 - (iii) surfing down, or jumping over or across, a wave, swell or wash, except for any necessary turn or diversion; or
- (b) any activity in which a motorised vessel tows a person on top of the water or in the air, as in waterskiing or parasailing; or
- (c) any activity in which a motorised vessel is operated at a speed greater than 35 knots; or
- (d) any activity in which a personal watercraft is used,

but does not include the use of a motorised vessel for transport by the most direct reasonable route between 2 places involving the driving of the vessel in a straight line;

motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*;

personal watercraft means a jet ski or other motorised vessel designed to be operated by a person standing, sitting astride or kneeling on the vessel but not seated within the vessel;

port operator has the same meaning as in the *Harbors and Navigation Act 1993*;

sessile animal means animals that are fixed in place, and includes corals, bryozoans, hydroids, sponges, anemones, ascidians and sea pens, but does not include razor fish or polychaete worms;

temporary prohibition or restriction means a prohibition or restriction of an activity within a marine park, or a zone or other area of a marine park, imposed under section 18 of the Act;

trawl net has the same meaning as in the *Fisheries Management (General) Regulations 2007*;

wastewater includes—

- (a) human waste either alone or in combination with water; and
- (b) water used in laundry, bathing or kitchen activities; and
- (c) wastewater generated by cleaning a toilet; and
- (d) wash down water; and
- (e) bilge water,

whether treated or untreated.

4—Interaction with other Acts (section 6 of Act)

- (1) Pursuant to section 6(2) of the Act, this regulation sets out the extent to which the prohibitions or restrictions applying within a marine park under the Act have effect despite the provisions of any other Act.
- (2) The rights conferred by a statutory authorisation that is in force when a prohibition or restriction is applied within a marine park under the Act (an *existing authorisation*) are not affected by the prohibition or restriction except as follows:
 - (a) in the case of a prohibition or restriction (other than a temporary prohibition or restriction) applied to a zone of a marine park—
 - (i) the rights conferred by an existing fishery authority are subject to the prohibition or restriction;
 - (ii) if, after the prohibition or restriction is applied, an existing authorisation (other than an authorisation under the *Mining Act 1971* or *Petroleum and Geothermal Energy Act 2000*) is varied or renewed so as to confer further rights, those further rights are subject to the prohibition or restriction;
 - (b) in the case of a temporary prohibition or restriction—the rights conferred by an existing statutory authorisation are subject to the temporary prohibition or restriction unless the notice imposing the temporary prohibition or restriction provides to the contrary.
- (3) The rights conferred by a statutory authorisation, other than a statutory authorisation under the *Mining Act 1971* or *Petroleum and Geothermal Energy Act 2000*, that comes into force after a prohibition or restriction is applied within a marine park under the Act are subject to the prohibition or restriction.
- (4) Nothing in this regulation—
 - (a) prevents the granting of a permit under section 19 of the Act authorising a person to engage in an activity; or
 - (b) prevents a person engaging, in a special purpose area, in an activity permitted in that area,that would otherwise be prohibited under this regulation.
- (5) A renewal of a statutory authorisation in the same terms does not, of itself, constitute the conferral of further rights.

Note—

In the case of a statutory authorisation under the *Mining Act 1971* or *Petroleum and Geothermal Energy Act 2000*, relevant applications must be referred to the Minister and, in the event of disagreement between the different Ministers as to whether an authorisation should be granted or renewed or the conditions to which an authorisation should be subject, the matter is to be resolved by the Governor.

5—Exemption from prohibitions and restrictions

The prohibitions and restrictions applying within a marine park do not apply to—

- (a) a person acting in the course of an emergency; or
- (b) an Aboriginal person acting in accordance with an ILUA or Aboriginal tradition; or
- (c) a person exercising official powers or functions under an Act (whether of the State or of the Commonwealth).

6—General managed use zone

- (1) A general managed use zone is comprised of the prohibitions and restrictions (the *general managed use rules*) set out in the table in subregulation (3).
- (2) An alleged offence against section 17 of the Act consisting of a contravention of a general managed use rule is an expiable offence if an expiation fee is set out in respect of the rule in the table in subregulation (3) and the expiation fee for such an offence is the amount so set out.
- (3) **Table of general managed use rules and expiation fees**

General managed use rules	Expiation fee
(a) A person must not, in the zone—	\$315
(i) deposit or leave any litter, bottle, broken glass, china, pottery, plastic article, rubbish, refuse or other waste material, except in an area or receptacle provided for that purpose; or	
(ii) wilfully break any article of glass, china, pottery, plastic or other brittle material.	

7—Habitat protection zone

- (1) A habitat protection zone is comprised of the prohibitions and restrictions (the *habitat protection rules*) set out in the table in subregulation (3).
- (2) An alleged offence against section 17 of the Act consisting of a contravention of a habitat protection rule is an expiable offence if an expiation fee is set out in respect of the rule in the table in subregulation (3) and the expiation fee for such an offence is the amount so set out.
- (3) **Table of habitat protection rules and expiation fees**

Habitat protection rules	Expiation fee
(a) A person must not contravene a general managed use rule.	The fee (if any) applicable to the rule under regulation 6

Habitat protection rules	Expiation fee
<p>(b) A person must not anchor a vessel greater than 80 metres in length (determined in accordance with the <i>Harbors and Navigation Act 1993</i>) in the zone except—</p> <ul style="list-style-type: none"> (i) in a harbor or at a transshipment point prescribed under the <i>Harbors and Navigation Regulations 2009</i>; or (ii) at a transshipment or other anchoring point designated as such on a navigational chart produced by or on behalf of the Minister responsible for the administration of the <i>Harbors and Navigation Act 1993</i>; or (iii) at a pilot station used in connection with compulsory pilotage under the <i>Harbors and Navigation Act 1993</i>. 	
<p>(c) A person must not dredge in the zone.</p> <p>This rule does not apply to a Minister, a port operator or a person acting under the authority of such a person.</p>	\$750
<p>(d) A person must not deposit in the zone solid matter removed as a consequence of dredging.</p> <p>This rule does not apply to a Minister, a port operator or a person acting under the authority of such a person.</p>	\$750
<p>(e) A person must not use a trawl net on or near the seabed in the zone.</p>	\$750
<p>(f) A person must not—</p> <ul style="list-style-type: none"> (i) remove from the zone— <ul style="list-style-type: none"> (A) the whole, or any part of or reproductive product of, an aquatic plant, algae or sessile animal (whether dead or alive); or (B) any soil, rock, mineral or similar material; or (C) wood, mulch or other dead vegetation; or (D) a fossil or archaeological remains; or (ii) harm an aquatic plant, algae or sessile animal in the zone; or (iii) intentionally disturb any— <ul style="list-style-type: none"> (A) wood, mulch or other dead vegetation in the zone; or (B) fossil or archaeological remains in the zone. <p>This rule does not apply in relation to removal, harm or disturbance—</p> <ul style="list-style-type: none"> (a) that arises in, or results from, the ordinary course of— <ul style="list-style-type: none"> (i) aquaculture authorised by, and carried on in accordance with, the <i>Aquaculture Act 2001</i>; or (ii) a lawful fishing activity carried on in accordance with the <i>Fisheries Management Act 2007</i>; or 	\$315

Habitat protection rules	Expiation fee
(b) that results from the ordinary performance of the functions of a scientific observer under section 87 of the <i>Fisheries Management Act 2007</i> in the zone and cannot reasonably be avoided; or	
(c) that arises incidentally in the ordinary course of some other lawful activity in the zone and cannot reasonably be avoided.	

8—Sanctuary zone

- (1) A sanctuary zone is comprised of the prohibitions and restrictions (the *sanctuary rules*) set out in the table in subregulation (3).
- (2) An alleged offence against section 17 of the Act consisting of a contravention of a sanctuary rule is an expiable offence if an expiation fee is set out in respect of the rule in the table in subregulation (3) and the expiation fee for such an offence is the amount so set out.

(3) Table of sanctuary rules and expiation fees

Sanctuary rules	Expiation fee
(a) A person must not contravene a habitat protection rule.	The fee (if any) applicable to the rule under regulation 7
(b) A person must not erect in the zone a structure of any kind, including (without limitation) a wharf, dock, jetty or breakwater.	
(c) A person must not engage in aquaculture in the zone.	
(d) A person must not engage in a prescribed activity of environmental significance specified in Schedule 1 clause 3(2) or 8(7) of the <i>Environment Protection Act 1993</i> if the activity involves a discharge into waters in the zone.	
(e) A person must not dredge in the zone.	\$750
(f) A person must not deposit in the zone solid matter removed as a consequence of dredging.	\$750
(g) A person must not establish a mooring in the zone. This rule does not apply to the establishment of a mooring—	\$315
(i) by a port operator; or	
(ii) in accordance with a statutory authorisation under the <i>Harbors and Navigation Act 1993</i> .	
(h) A person must not, for fee or reward, conduct a tour of the zone or otherwise carry on a business comprising tourism in the zone. This rule does not apply in relation to activities authorised by a statutory authorisation under the <i>National Parks and Wildlife Act 1972</i> or <i>Wilderness Protection Act 1992</i> .	\$315
(i) A person must not conduct a fishing, swimming, surfing or boating competition or speed trial or other organised sport in the zone.	\$315

Sanctuary rules	Expiation fee
<p>This rule does not apply in relation to activities authorised by a statutory authorisation under the <i>Harbors and Navigation Act 1993</i>, <i>National Parks and Wildlife Act 1972</i> or <i>Wilderness Protection Act 1992</i>.</p>	
<p>(j) A person must not conduct scientific research for commercial or professional purposes in the zone.</p> <p>This rule does not apply to the conduct of scientific research—</p> <ul style="list-style-type: none"> (i) by a scientific observer authorised to conduct the research under the <i>Fisheries Management Act 2007</i>; or (ii) authorised by a statutory authorisation under the <i>National Parks and Wildlife Act 1972</i> or <i>Wilderness Protection Act 1992</i>. 	\$315
<p>(k) A person must not, for a commercial purpose while in the zone, film, photograph, videotape or otherwise record images or sound.</p> <p>This rule does not apply to conduct authorised by a statutory authorisation under the <i>National Parks and Wildlife Act 1972</i> or <i>Wilderness Protection Act 1992</i>.</p>	\$315
<p>(l) A person must not—</p> <ul style="list-style-type: none"> (i) remove from the zone the whole, or any part of or reproductive product of, a plant or animal (whether dead or alive); or (ii) harm a plant or animal in the zone; or (iii) feed or interfere with a wild animal in the zone; or (iv) use berley in the zone; or (v) engage in an act preparatory to, or involved in, an act referred to in a preceding subparagraph. <p>Note—</p> <p>Consequently, a person must not engage in a fishing activity in the zone.</p> <p>However, this rule does not apply in relation to—</p> <ul style="list-style-type: none"> (a) a lawful fishing activity (including berleying) carried on in the zone before 1 October 2014; (b) removal or harm that arises incidentally in the ordinary course of a lawful activity in the zone and cannot reasonably be avoided. 	\$315
<p>(m) A person must not remove water from the waters of the zone or extract salt or any other substance from the waters of the zone.</p>	\$315
<p>(n) A person must not discharge wastewater from a vessel into water, or onto land, in the zone.</p>	\$315
<p>(o) A person must not engage in a motorised water sport in the zone.</p> <p>Nothing in this rule prohibits or restricts a person traversing a zone in a motorised vessel.</p>	\$150

Sanctuary rules	Expiation fee
(p) A person must not bring a domestic animal into the zone or allow a domestic animal to remain in the zone unless, at all times—	\$75
(i) the animal is confined to a motor vehicle, trailer or vessel; or	
(ii) the animal is a dog and the dog is on a lead that is 2 metres or less in length; or	
(iii) the animal is in an area in which, under a council by-law, animals of that kind may be exercised or be present and any requirements of the by-law in relation to the animal are complied with.	

9—Restricted access zone

- (1) A restricted access zone is comprised of the prohibitions and restrictions (the *restricted access rules*) set out in the table in subregulation (3).
- (2) The expiation fee for an alleged offence against section 17 of the Act consisting of a contravention of a restricted access rule is the amount set out in respect of the rule in the table in subregulation (3).
- (3) **Table of restricted access rules and expiation fees**

Restricted access rules	Expiation fee
(a) A person must not fly a helicopter at an altitude of less than 500 metres above ground or sea level of a restricted access zone.	\$750
(b) A person must not fly an aircraft (other than a helicopter) at an altitude of less than 300 metres above ground or sea level of a restricted access zone.	\$750
(c) A person must not otherwise enter or remain in or engage in any activity in a restricted access zone.	\$750

10—Manner and form of warnings

For the purposes of section 17(2) of the Act, a warning must—

- (a) be given in a manner and form approved by the Minister; and
- (b) set out the following information:
 - (i) the full name, residential address and contact details of the alleged offender;
 - (ii) particulars of the alleged offence, including—
 - (A) the date on which it was committed; and
 - (B) the time at which it was committed; and
 - (C) a description of the location at which it was committed; and
 - (D) the nature of the alleged offence;
 - (iii) the full name of the authorised officer giving the warning.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2012	243	<i>Gazette 29.11.2012 p5278</i>	29.3.2013: r 2