



NSW National Parks
and Wildlife Service

Our reference: DOC09/32085

Mr Bruce Schumacher
Chairperson
Advisory Committee for Recreational Fishing
C/o Department of Industry and Investment (NSW)
PO Box 21
CRONULLA NSW 2230

Dear Mr Schumacher

Possession of fishing equipment in marine park sanctuary zones

I am writing in response to a matter raised at the May meeting of the Advisory Council on Recreational Fishing relating to possession of fishing equipment in marine park sanctuary zones.

The Marine Parks Authority includes the respective Directors General of the Department of Environment, Climate Change and Water (DECCW) and Department of Industry and Investment and is chaired by the Director General of the Department of Premier and Cabinet. While day to day management and marine park operations are administered by DECCW, I&I (NSW) continues to play an active role on the Marine Parks Authority providing advice on policy and operational matters relating to fishing, including enforcement and compliance.

The Marine Parks Authority has established a Marine Parks Compliance Group to coordinate marine park compliance activities and oversee implementation of a cross agency operational agreement. The group includes senior I&I NSW (Fisheries) and DECCW compliance managers and meets regularly to ensure that at state-wide level compliance policies and plans are coordinated, consistent or complementary, where possible. Consistency is necessary since Part 9 (Divisions 1-4) of the *Fisheries Management Act* relating to enforcement apply to marine park rangers and to marine park offences in the same way they apply to fisheries officers and fisheries offences.

An outcome of this co-operative approach is that the Marine Parks Authority compliance policy and state-wide compliance plan are both closely linked to national and I&I NSW fisheries compliance plans. Also, at the local level marine park officers and fisheries officers are working to develop fisheries district and marine park compliance plans, to improve efficiency and effectiveness of enforcement in and adjacent to marine parks.

Both DECCW and I&I NSW are in agreement that a consistent approach to the interpretation of defences relating to the possession of fishing equipment is essential. To this end a copy of guidance on defences relating to possession of equipment under clause 1.25 of the *Marine Parks (Zoning Plans) Regulation 1999* and section 25 of the *Fisheries Management Act 1994* are attached.

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The Marine Parks Regulation prohibits the possession of fishing equipment in areas closed to fishing. The reason behind this law is simply to prevent fishing in these areas. Where an enforcement officer has evidence to support that a person was fishing, for example there were fresh fish on deck and rods were being baited, but did not actually observe fish being caught, the officer has the option to charge the person for possession of equipment.

Clearly, there are practical reasons why fishers will be in the possession of fishing equipment in sanctuary zones and other places in a marine park, but will not be using that equipment for fishing. In response to the issues raised by the Advisory Council the grounds for a defence for possession of fishing equipment have been clarified as attached. This explanatory information will be included on the Marine Parks Authority website and in future publications, where practicable to avoid confusion.

For the benefit of Advisory Council members I can confirm that during 2008/09, of the 22 enforcement actions relating to possession of illegal equipment in marine parks, only 3 persons received penalty notices. The remainder were issued written cautions. These facts suggest that fisheries and marine park officers have taken an even handed, broadly consistent and reasonable approach to enforcement of these provisions.

If there are any queries relating to this matter, please do not hesitate to contact me on 02 9585 6307 or Mr Adrian Toovey, Manager, Aquatic Protected Areas on 02 9585 6589.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Wright', with a long horizontal flourish extending to the right.

MICHAEL WRIGHT
Director Protected Areas Policy and Programs
Parks and Wildlife

Enclosure

cc: Paul O'Connor, Industry and Investment (NSW)





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**Defences for the possession of equipment used to take animals or plants (Clause 19,
Marine Parks Regulation 1999)**

Transiting a sanctuary zone

Fishers may transit through any sanctuary zone (i.e. travelling from one place where the fishing gear can be legally used to another place the gear can be legally used) with:

- Fishing rod 'fully rigged', provided no part of the line is immersed in the water and no hook is baited;
- Spears provided they are stowed
- Nets provided no part of a net is in the water

Anchoring, mooring or a ground in a sanctuary zone

When anchored, moored or a ground in a sanctuary zone all tackle must be removed from a rod, leaving only a bare line on the reel. This is deemed to be in an "unrigged state" for the purposes of the Marine Parks Regulation.

While there is no specific defence for possession of other fishing equipment in a sanctuary zone, as a matter of policy all other equipment must be stowed, including nets and spearguns. In this circumstance the term 'stowed' means: contained, or covered and secured or packed away. (For example, a speargun strapped to the hull or covered or in a hold would be considered stowed. A speargun lying on the deck of vessel would not be considered stowed)

Drifting in a sanctuary zone

Currently the Marine Parks Regulation does not provide a defence for possession of equipment whilst drifting through a sanctuary zone; however, as a matter of policy, drifting in a sanctuary will require rods to be in an unrigged state (only a bare line on the reel), and any form of fishing equipment to be stowed, the same as if the vessel was at anchor (it will be a defence if the vessel is drifting because of motor failure).

Commercial fishers

In regard to gear restrictions applying to commercial fishers the above defences equally apply. Marine Parks has also adopted the DPI Fisheries policy, which allows commercial fishers to have reasonable access to conduct legitimate fishing operations. Commercial fishers operating in marine parks will be given permission to transit through sanctuary and habitat protection zones. However, commercial fishers will be individually shown what constitutes stowed fishing gear for the purpose of transiting such areas.

Cleaning fish and fishing gear in a sanctuary zone

Cleaning fish and or fishing gear is not permitted in a sanctuary zone except at designated fish cleaning facility, which are generally shore based (e.g. Halifax point at Port Stephens, Minnie Waters at Solitary Islands).

Given the unique circumstance in Port Stephens whereby travellers from **Environment and Climate Change** NSW via sanctuary zones to their fishing grounds, the zoning plan allows for the cleaning of fishing nets





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in sanctuary zones of the marine park, but only while the net is being transported to or from any place where the net could lawfully be used for commercial fishing; and the cod-end of the net is open and otter boards are not submerged.

Relevant legislation - possession of equipment used to take animals or plants

Fisheries Management Act 1994

25 Possession of illegal fishing gear

(1) A person who is in possession of any fishing gear in, on or adjacent to any waters is guilty of an offence if:

- (a) the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under this Act; or
- (b) the taking of fish from those waters is, at that time, prohibited by or under this Act.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) A person who is on board a boat is taken to be in possession of any fishing gear found in the boat.

(3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was being transported, in accordance with the written authority of a fisheries officer, to waters where the person could lawfully take fish with that gear.

(4) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was in his or her possession for a lawful purpose.

Marine Parks (Zoning Plans) Regulation 1999 (as of end of 31 August 2009)

1.25 Possession of animals or plants or of equipment used to take animals or plants

(2A) A person who, while in any part of a marine park, is in possession of any equipment (including fishing gear) that is used, or designed to be used, for the purpose of taking an animal or plant is guilty of an offence if the use by that person of that equipment for taking an animal or plant from that part of the park, at that time, is prohibited by law.

Maximum penalty: 100 penalty units.

(2B) For the purposes of this clause, a person who is on board a boat is taken to be in possession of any equipment (including fishing gear) found in the boat and any plant or animal found in the boat.

(3) It is a defence to a prosecution for an offence under subclause (2) or (2A) if the person charged satisfies the court:

(a) if the equipment concerned was fishing gear—that the fishing gear was being transported to or from any place where the person could lawfully use the equipment to take fish and was in the authorised state, or

(b) if the equipment concerned was not fishing gear—that the equipment was being transported to or from any place where the person could lawfully use the equipment to take animals or plants, and was in a state in which it could not have been used to take animals or plants, or

(b1) if the equipment concerned was a fishing line—that the fishing line was on board a vessel within a sanctuary zone, the vessel was anchored, moored or aground and the fishing line was in the unrigged state, or

(c) that the person could not reasonably have known that the equipment was on board a boat





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(d) that the equipment was in the person's possession for a purpose that was lawful in the part of the marine park that the person was in.

(3A) A contravention of subclause (1)-(2A) is designated as a forfeiture offence.

Note. See section 36 of the Act and clause 29 of the Marine Parks Regulation 2009

(4) For the purposes of subclause (3) (a), the **authorised state** is:

(a) in the case of a fishing line—no part of the line was immersed in the waters of the marine park and no hook was baited, or

(b) in the case of a fishing net—no part of the net was immersed in the waters of the marine park, or

(c) in the case of fishing gear not referred to in paragraph (a) or (b)—the gear was stowed away.

(5) For the purposes of subclause (3) (b1), the **unrigged state**, in relation to a fishing line, means no part of the fishing line is attached to any hook, artificial lure, artificial fly, swivel or other piece of fishing tackle (other than any reel the fishing line was spooled on).

6.5 Fish cleaning - Port Stephens-Great Lakes Marine Park Zoning Plan

Despite clauses 1.11 and 1.25 of this Regulation, a person may clean fish or fishing gear while in a sanctuary zone of the marine park at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.

(2) Despite clauses 1.11 and 1.25 of this Regulation, a person may clean a fishing net in a sanctuary zone of the marine park while:

(a) the net is being transported to or from any place where the net could lawfully be used for commercial fishing, and

(b) the cod-end of the net is open, and

(c) none of the otter boards of the net are in the water.

