



Commonwealth Marine Reserves Indigenous Forum Outcomes Report

This report was compiled by the facilitator with input from the participants and the department as a record of the forum discussions and outcomes and does not constitute government policy

Commonwealth Marine Reserves Indigenous Forum Outcomes Report

Darwin 5 December 2012

CONTENTS

Thanks	2
Agenda	3
Participants	4
Forum Objectives	5
Introductory comments from DSEWPAC	5
Overview of Commonwealth marine reserves	6
Timeline for developing and implementing management plans	11
Issues and concerns	12
Management Principles	16
Appendix 1: Background materials provided to participants ahead of the Forum	17
Appendix 2: Slides from DSEWPAC Presentations	24

Thanks

On behalf of the Marine Division of the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC), I wish to sincerely thank Donna Jackson for her warm welcome to Larrakia country on which the Forum was held.

I also want to thank all the representatives of Land Councils and other Indigenous organisations who devoted their time to travel to Darwin and contributed so many valuable ideas, issues and recommendations at the Forum. The Marine Division looks forward to continuing to work with you and with local Indigenous groups in the planning and management of Commonwealth marine reserves in the coming months and years.

Stephen Oxley

First Assistant Secretary

Marine Division

Department of Sustainability, Environment, Water, Population and Communities

Forum Agenda

Changes were made to the agenda during the Forum in response to requests from participants and the need to address emerging issues. The first afternoon session was made available to representatives of Indigenous organisations to hold a facilitated discussion without DSEWPaC representatives present.

09:00: Welcome and Introductions

- Welcome to Country
- Participant introductions
- Forum objectives and agenda

09:30: Overview of the Commonwealth marine reserves

- What are Commonwealth Marine Reserves?
- Planning regions and networks
- Management plans

10:30: Morning tea/coffee

11:00: Indigenous engagement in Commonwealth marine reserves

- Identifying opportunities and constraints
- Local and regional consultation
- Regional issues
- Examples of things to consider:
 - Role of Indigenous sea rangers?
 - Collaboration with sea country Indigenous Protected Areas?
 - National Indigenous Sea Country Framework?

12:45: Lunch

13:30: Developing management plans for Commonwealth marine reserve networks

- Timeline
- Consultation process
- Indigenous engagement
- Implementation of management plans

15:00: Afternoon tea/coffee

15:15: Next steps

Recap on opportunities and constraints

Recommendations and/or requests for further information

Ongoing communication

16:00: Forum close

Forum Participants

The following organisations participated in the Forum:

- Kimberley Land Council
- Yamatji Marlpa Aboriginal Corporation
- Goldfields Land and Sea Council
- South Australian Native Title Services Ltd
- NSW Aboriginal Land Council
- North Queensland Land Council
- Carpentaria Land Council
- Tiwi Land Council
- Northern Australian Indigenous Land and Sea Management Alliance (NAILSMA)
- Torres Strait Regional Authority
- Native Title Services CORP Ltd
- Anindilyakwa Land Council
- Northern Land Council

The Forum was facilitated by Dermot Smyth (Smyth and Bahrtdt Consultants) and attended by staff from the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC)

Forum Objectives

Key objectives of the Forum were to:

1. Provide information about the creation of new marine reserves under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)
2. Explain the process for developing management plans for the new marine reserves
3. Begin exploring opportunities for Indigenous communities/organisations to participate in the management of the marine reserves

The Forum provided the opportunity to invite comments from Land Councils on the intent to prepare management plans for Commonwealth marine reserves in the South-west, North-west, North, Coral Sea and Temperate East marine regions as specified under the EPBC Act.

Introductory comments

Stephen Oxley from DSEWPaC made introductory comments that provided context to the forum objectives. He acknowledged the desire of Aboriginal and Torres Strait Islander people to be fully engaged in the management of sea country. He recognised that Indigenous people see the land, sea and people, and their spiritual beliefs and culture as an inseparable whole. He observed that the expectations and aspirations of Indigenous people for sea country were given clear expression at the National Indigenous Sea Country Workshop held at Mary River Park in the Northern Territory in May 2012.

Mr Oxley said DSEWPaC recognised there was a growing body of sea country management expertise and capacity among Indigenous organisations and there was an opportunity to build on and use this expertise in the management of Commonwealth marine reserves. DSEWPaC strongly supported Indigenous land management through the Indigenous Protected Areas program and Working on Country. He indicated that DSEWPaC was seeking guidance on how to proceed with Indigenous participation in the development of management plans for the new Commonwealth marine reserves and in their ongoing management.

Mr Oxley said the initial consultation was being undertaken primarily with Land Councils and Native Title Representative Bodies because they provided the links to Traditional Owners of sea country. There were also statutory requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for engagement with Traditional Owners (through Land Councils) and other Indigenous people with interests in the marine reserves and their management. The process would be explained during the workshop, but had also been outlined in the letter of invitation to the workshop and in three fact sheets circulated to participants before the meeting. These fact sheets and letter of invitation are included in Appendix 1. The Indigenous Advisory Committee appointed by the Minister for Sustainability, Environment, Water, Population and Communities under the EPBC Act had suggested DSEWPaC conduct the workshop as a first step in ongoing consultation. Mr Oxley said DSEWPaC viewed the workshop as the beginning of an ongoing process of engagement that went beyond the basic consultation requirements of the EPBC Act.

Overview of Commonwealth marine reserves

DSEWPaC officers gave two presentations providing background information covering the new Commonwealth marine reserves and the process for the development of the statutory management plans and associated management arrangements. The slides used for the presentation are in Appendix 2. The presentations were interactive, with several questions from the participants assisting in clarifying aspects of the process.

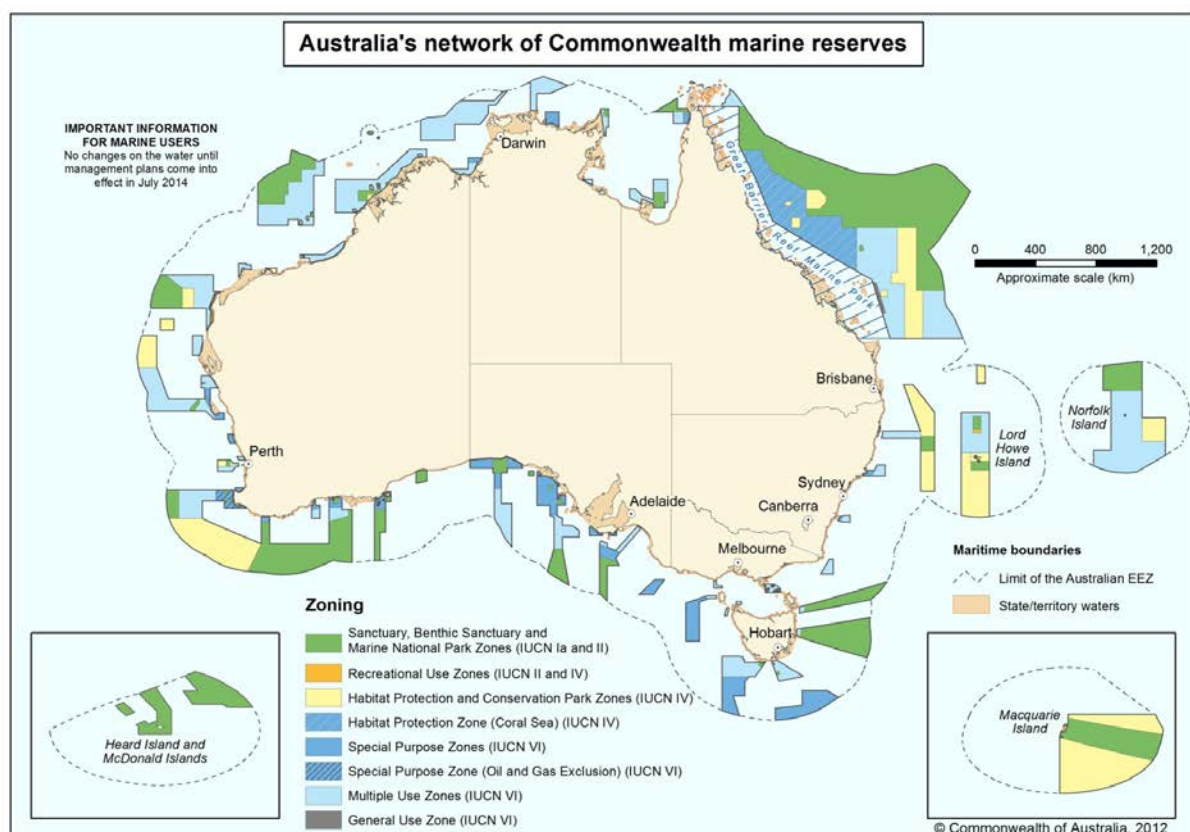
What are Commonwealth marine reserves (Slides 1-6; 10-16)

‘Commonwealth marine reserves’ is the name given to marine protected areas established in Commonwealth waters under the EPBC Act. The Great Barrier Reef Marine Park was established under its own piece of legislation (*Great Barrier Reef Marine Park Act 1975*) and is managed collaboratively by Queensland government and the Great Barrier Reef Marine Park Authority.

Commonwealth waters are those waters located offshore of the states and Northern Territory waters (also called ‘coastal waters’). State and Territory legislation applies to coastal waters. Commonwealth waters commence 3 nautical miles (~5.5km) off the coastal baseline and reach to the edge of Australia’s exclusive economic zone (EEZ), some 200 nautical miles (~360km) offshore.

Commonwealth marine reserves are therefore mostly offshore reserves and do not encompass coastal environments or inshore waters.

On 17 November 2012, forty new Commonwealth marine reserves were proclaimed under the EPBC Act. The proclamation of the new reserves was the culmination of the Australian Government’s Marine Bioregional Planning Program, which had commenced in 2006 and had included several phases of consultation.



The new reserves have added to a number of pre-existing reserves, including the South-east Network of Commonwealth Marine Reserves, which was established in 2007, and twelve other separate and generally small marine reserves in other regions. A number of these existing marine reserves have been incorporated into new, larger ones.

With the new reserves, the Commonwealth marine reserves estate now consists of fifty-nine separate reserves, which together cover more than 2.8 million square kilometres of Australian oceans.

With the exception of the Coral Sea, which is one large marine reserve, all reserves are grouped into regional networks (South-west; North-west; North; Temperate East; South-east), which also represent the unit of management.

The Commonwealth marine reserves, together with the Commonwealth component of the Great Barrier Reef Marine Park, represent the Australian Government's contribution to the National Representative System of Marine Protected Areas (NRSMPA). The NRSMPA was agreed by all governments in Australia in 1998. While Australian jurisdictions have worked towards the NRSMPA through separate processes and legislative contexts, the Australian Government has sought, whenever possible and appropriate, to design the new Commonwealth marine reserves so that there is connectivity with adjacent state or Territory marine parks.

The primary objective of the NRSMPA, as agreed by Australian governments in 1998, is to *“contribute to the long-term ecological viability of marine and estuarine systems, to maintain ecological processes and systems, and to protect Australia's biological diversity at all levels”*.

As the Australian Government's contribution to the NRSMPA, the Commonwealth marine reserve estate is a “representative” system of marine reserves, similar to Australia's National Reserve System established on land. This means that it encompasses examples of all types of ecosystems, habitats and ecological communities known to occur in Australia's oceans based on current data and science. The newly completed representative system of Commonwealth marine reserves—while representing one of many tools that the Australian Government implements to manage the marine environment—will play an important role in helping to ensure that our oceans remain viable and healthy into the future.

The NRSMPA has also a number of secondary objectives, including *“providing for recreational, aesthetic, cultural and economic needs of Indigenous and non-Indigenous people”*.

How will the reserves be managed? (Slides 9; 17-21)

Commonwealth marine reserves will be managed through statutory management plans.

The process to develop the management plans is currently underway. In the meantime, transitional management arrangements are in place and will remain during the period while the statutory management plans are developed and until these are given effect. Under these transitional arrangements, there are no changes in on-water activity for any users during this period. For areas that correspond to pre-existing reserves, the same arrangements that applied to those reserves before 17 November 2012, will continue to be in place during this time.

Management plans provide for the protection and conservation of the marine reserves. They set out how the reserves are to be managed, how they should be looked after and what activities can and cannot be undertaken in the reserves. Management plans are reviewed and renewed every 10 years.

The EPBC Act and Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations) prohibit some activities being undertaken in a Commonwealth reserve unless they are expressly provided for by a management plan for the reserve or are approved in writing by the Director of National Parks when a management plan is not in operation. They include actions that affect native species, commercial activities and mining (including oil and gas) operations. A management plan can provide for actions affecting native species and commercial activities to be carried on under authorisation by the Director of National Parks, for example through permits.

Management plans will be developed for the South-west, North-west, North, and Temperate East marine reserve networks, and the Coral Sea marine reserve.

Historically, management plans have been developed for individual reserves. For the purposes of managing large networks of representative marine reserves, a new approach is being taken by developing network-wide management plans. These network-wide management plans will represent a high level enabling framework, which will authorise and promote local-scale and focused implementation arrangements. These implementation arrangements will therefore not be part of the plan, but will be included in implementation arrangements that hang off the plan. The implementation arrangements are likely to be developed after the management plans are finalised, but before they come into effect in July 2014. The network-wide approach to management plans has recently been applied to the South-east Commonwealth Marine Reserve Network, which was established in 2007. A draft management plan for the South-east marine reserves network was released for public comment in mid 2012.

The management plans will include five parts:

- **Part 1** will set out the objectives of the plan and an overview of the structure of the plan.
- **Part 2** will describe the biological and geographical characteristics of the region, the conservation values, and will summarise uses of the region and pressures arising from these and broader environmental threats, e.g. climate change; land-based sources of pollution.
- **Part 3** will set out the management zones under which the reserves in the network are to be managed, based on the International Union for Conservation of Nature (IUCN) categories. The EPBC Act requires that a Commonwealth reserve must be managed in accordance with the Australian IUCN reserve management principles that are prescribed for each IUCN category by the EPBC Regulations. The different colours on the map at page 6 define the different types of zones as assigned at the time of Proclamation—from highly protected zones (green) to zones where many activities are allowed to continue (blue and light blue zones). Management zones may be different from the zones assigned at Proclamation. Four IUCN categories are currently used in the Commonwealth marine reserves estate:
 - o IUCN Category 1a Strict nature reserve: Managed primarily for scientific research or environmental monitoring.
 - o IUCN Category II National park; Protected and managed to preserve its natural condition.
 - o IUCN Category IV Habitat/species management area: Managed primarily, including (if necessary) through active intervention, to ensure the maintenance of habitats or to meet the requirements of specific species.
 - o IUCN Category VI Managed resource protected area: Managed to ensure long-term protection and maintenance of biological diversity with a sustainable flow of natural products and services to meet community needs.

- **Part 4** will include management strategies directed at supporting the implementation of the plan's prescriptions—as set out in Part 5—and the achievement of the plan's objectives; for example, developing a better understanding of the effects of pressure on the conservation values, avoidance and mitigation of impacts, incident response and compliance. It is anticipated that a management strategy to support Indigenous involvement in the management of marine reserve networks will be developed and included in all plans. This strategy will be the key mechanism to provide for ongoing Indigenous engagement in the management planning framework and for the development of local-scale arrangements, including for the day-to-day management of marine reserves.
- **Part 5** represents the 'nuts and bolts' of the plan. It will set out what activities can be undertaken in each zone and how they can be done either through permits or approvals, including approvals for classes of activities (e.g. commercial fishing). This part will be structured around the main classes of activities and operations occurring in the Commonwealth marine environment. Because Indigenous traditional uses, other than for commercial purposes, do not need to be permitted or approved in order to be undertaken in Commonwealth reserves, they are not reflected in this part.

How will management plans be prepared? (Slide 22)

The plans are prepared consistent with the statutory process set out in the EPBC Act, which includes the following steps:

- The Director of National Parks publishes a notice inviting comment for a minimum period of 30 days on the proposal to prepare a draft management plan. The notice for the Commonwealth marine reserves (Coral Sea, Temperate East, South-west, North-west and North regions) was published on 18 November and the period of public comment will conclude on 18 December 2012. The Director of National Parks has written to the Chair of all relevant Land Councils, inviting comments on the proposal to prepare the draft management plans.
- The next step is the preparation of the draft management plans. In preparing a management plan and in addition to the protection, conservation and management of the reserves' values, the Director must take into account a range of matters including the interests of Traditional Owners and other Indigenous interests and of any person with prior usage rights that existed immediately before the reserve was declared.
- The draft management plan for each Commonwealth marine reserves network will be released for a 30 day public comment period. We anticipate that this will happen in mid January 2013.
- Each draft management plan is then finalised and the Director of National Parks provides the Environment Minister with the final management plan, the public comments received on the draft plan and the Director's views on those comments.
- The Minister considers the final plans and the Director's views and, if satisfied, approves the management plans (subject to any amendments the Minister considers necessary).
- The plans are tabled in both Houses of the Parliament together with any comments, views, reports or recommendations that have not been given effect in the plans. Management plans can be disallowed by the Parliament.
- Once registered on the Federal Register of Legislative Instruments, a plan comes into effect on the date specified in the management plan (unless it is disallowed by the Parliament). It is planned that the date of effect for all Commonwealth marine reserves management plans

(other than the South-east network management plan) will be 1 July 2014. The management plan for the South-east reserves network is planned to come into effect on 1 July 2013.

Recognition of Indigenous rights and interests in relation to Commonwealth reserves

(Slides 7 & 8)

Section 8 of the EPBC Act provides that the Act does not affect the operation of the *Native Title Act 1993* and the *Aboriginal Land Rights (Northern Territory) Act 1976*. Both these Acts include provisions that preserve customary rights to use of land and waters. With respect to Commonwealth reserves, including marine reserves, s.359A of the EPBC Act provides that Commonwealth reserves do not prevent Indigenous persons from undertaking non-commercial hunting or food gathering or using the reserves for ceremonial and religious purposes.

The Act explicitly recognises Indigenous peoples' knowledge of, and role in, the conservation and ecologically sustainable use of Australia's biodiversity.

There are clear legislative requirements under the EPBC Act to consult with Indigenous peoples with respect to the preparation of management plans for Commonwealth reserves:

The first of these provisions (s.368(2)) is that the Director of National Parks must invite comments on the intent to prepare draft management plans from any land council for Indigenous people's land in the reserve. This requirement aligns with the Notice of Intent stage where public comments are invited on a proposal to prepare a draft management plan for each regional marine reserves network. This stage provides an opportunity to comment on what the management plan should cover.

The second requirement (s. 368(3)) provides for the interests of Traditional Owners and other Indigenous persons to be taken into account throughout the whole management planning process, including outside the statutory comment periods.

Finally, the Director of National Parks must invite comments on draft management plans, at the time these are released, from any land council for Indigenous people's land in the reserve (s.368(5))

Timeline for developing and implementing management plans

A key focus of discussions throughout the day was the timeframe for the development of the Commonwealth marine reserves management plans and arrangements. The timelines and key dates are illustrated and summarised below to provide clarity and for ease of reference.

	Oct-Dec 12	Jan-Mar 13	Apr-Jun 13	Jul-Sep 13	Oct-Dec 13	Jan-Mar 14	Apr-Jun 14	Jul-Sep 14
First consultation								
Second consultation								
Management Plans finalised								
Further engagement on implementation								
South-east Management Plan in effect								
All management plans in effect								

- On 18 November 2012, the Director of National Parks published a notice inviting comment on the proposal to prepare five draft management plans. This public comment period will conclude on **18 December 2012**.
- The draft management plan for each Commonwealth marine reserves network and the Coral Sea Commonwealth Marine Reserve will be released for a 30 day public comment period in **mid January 2013**.
- The management plans will then finalised, including the tabling in and consideration by both Houses of Parliament. It is anticipated that this will be concluded by **mid 2013**.
- The management plans (other than the South-east management plan) are anticipated to come into effect on **1 July 2014**.
- The South-east reserves network was proclaimed in 2007 and the draft management plan public comment stage has been completed. It is anticipated that it will come into effect on **1 July 2013**.
- Starting **from March/April 2013** further engagement of Traditional Owners and other interested Indigenous groups will explore opportunities for local-scale management implementation arrangements; these arrangements will hang off the relevant network management plan but will not be included in the plans. It is envisaged that commercial, recreational and conservation stakeholders will also be involved in further development of implementation tools and plans during this period. Some elements of the implementation will be ongoing, including consultative structures aimed at facilitating collaborative and partnership approaches to the management of the Commonwealth marine reserves.

Issues and concerns

Representatives of Land Councils and other peak Indigenous organisations made it clear that they were not in a position to speak on behalf of Indigenous people directly associated with sea country. The issues, concerns and recommendations summarised below are the outcomes of good faith discussions among the Indigenous representatives aimed at protecting the rights and interests of local Indigenous groups and maximising their opportunities for engaging in and benefiting from the management of Commonwealth marine reserves.

Following the presentations from DSEWPac representatives, participants worked in small groups and in plenary sessions to articulate issues, concerns, opportunities and ways forward relevant to the planning and future management of Commonwealth marine reserves. For some of these discussions DSEWPac representative were asked to leave the Forum to allow for free debate among participants; on their return, DSEWPac representatives were invited to respond to issues raised. The list of issues and concerns provided below were then used to develop management principles that the participants indicated should guide the planning and management of Commonwealth marine reserves.

Planning timeframes

- The very short timeframe for developing management plans, particularly over the summer holiday period, does not allow for appropriate consultation of Traditional Owner groups and other Indigenous people potentially affected by Commonwealth marine reserves in or adjacent to their sea country.
- As a result of these time limitations, Traditional Owners and other Indigenous people associated with particular Commonwealth marine reserves may not have the opportunity to give their informed consent to the management plans, as required by the United Nations Declaration on the Rights of Indigenous Peoples and other international instruments to which Australia is a signatory, for example the Convention on Biological Diversity.

Indigenous Objectives and Values

- Indigenous people are not “stakeholders”. Indigenous engagement processes should recognise that Indigenous people associated with sea country have nationally and internationally recognised rights for participation and benefit which are separate and distinct from the interests of “stakeholders”.
- The objectives and values of Commonwealth marine reserves must include Indigenous cultural values, in addition to the biodiversity and other biophysical values that have determined the development of the Commonwealth marine reserve networks to date.
- Recognition and protection of “associated cultural values” is a requirement of International Union for the Conservation of Nature (IUCN) guidelines for protected area planning and management which Australia has endorsed.
- Recognition of Indigenous objectives, values, rights and interests should be reflected where appropriate throughout management plans, not just within a separate Indigenous statement or strategy.
- Management plans and associated strategies should recognise that Indigenous people may have commercial interests in areas affected by Commonwealth marine reserves, in addition to their cultural values, rights and interests.
- Management plans should specify what level of cultural heritage protection is provided by Commonwealth marine reserves.

Indigenous employment and other livelihood opportunities

- Coastal Indigenous groups have different current capacities to be involved in the management of Commonwealth marine reserves. Some groups have a well developed capacity, including well resourced and well-trained sea ranger groups, and are in a position to be actively engaged in management of the reserves immediately. Other groups have considerably less capacity and will require training, investment and other support to become engaged in managing the Commonwealth marine reserves.
- Indigenous employment opportunities, which should be negotiated locally, should include a wide range of roles, including rangers, scientists, managers etc. as well as a diversity of capacity-building pathways (e.g. scholarships).
- Indigenous employment opportunities should be included in Indigenous “adjustment packages”—an issue that was raised in the context of discussions about adjustment assistance for the commercial fishing industry—based on equity and maximising social, cultural and economic outcomes for Indigenous people.
- Investment in Indigenous employment by third parties (e.g. investment in Indigenous ranger groups by resource companies as part of environmental offset agreements) should respect all Indigenous protocols discussed at this Forum and should not impact on any native title compensation agreements negotiated with the same or other parties.
- Preferential Indigenous employment provisions should be included within network and reserve management plans, with detailed Indigenous strategies and actions to be negotiated locally for each Commonwealth marine reserve.

Indigenous zones

- Consideration should be given to establishing Indigenous management zones – in addition to supporting Indigenous management in all zones.

Connectivity

- Commonwealth marine reserves should support connectivity between:
 - State/Territory and Commonwealth waters;
 - State/Territory and Commonwealth agencies;
 - Government and Indigenous agencies;
 - Land and sea management and values;
 - Cultural and natural values;
 - Indigenous groups and organisations across regions and around Australia
- Effective management, monitoring and evaluation of saltwater country is undertaken through an ecosystem approach as referred to in the IUCN guidelines and the International Convention on Biological Diversity. This approach is best undertaken by local Indigenous groups supported by relevant state, territory and Commonwealth agencies.

Native title

- Native title should be assumed to exist in all Commonwealth marine reserves - sea country is not unallocated crown land.
- Planning and management of reserves must not impact on native title rights and interests in practice (notwithstanding the assurance in the EPBC Act that native title is not impacted by the establishment of the reserves).

- Investment to support Indigenous engagement in managing Commonwealth marine reserves must not impact on native title compensation packages/agreements.
- Indigenous people with an interest in a Commonwealth marine reserve should be given the opportunity and resources to negotiate an Indigenous Land Use Agreement (ILUA) over that Reserve if they wish to do so.
- Indigenous groups who have a Native Title interest in sea-country affected by the Commonwealth marine reserves, and wish to declare Saltwater Indigenous Protected Area's (IPA's) in conjunction with DSEWPAC, should be supported through the joint development of reserve management plans / IPA plans of management.

Changes to Commonwealth marine reserves

- Boundaries of Commonwealth marine reserves should be reviewed over time to reflect requirements of Indigenous groups to protect cultural and other values if required.
- Consideration should be given to allocating Aboriginal or Torres Strait Islander names to Commonwealth marine reserves if requested by local Indigenous groups.
- The authority of the Director of National Parks, Minister or Parliament to make changes to Commonwealth marine reserves and management plans should be clearly explained.

Funding

- Allocation of substantial, adequate and sustainable funding is required to achieve the conservation, social and cultural objectives of Commonwealth marine reserves. This funding must be additional to current environmental management expenditure, not a re-allocation of existing State, Territory or Commonwealth funding.
- Investing in understanding and supporting Indigenous values, interests and capacity-building in Commonwealth marine reserves will be rewarded by improved environmental, social, cultural and 'closing the gap' outcomes.
- Commonwealth investment to support Indigenous management of Commonwealth marine reserves should be allocated directly to the appropriate Indigenous organisations or to their nominated auspicing organisations.

Indigenous Engagement:

- DSEWPAC should commit to incorporating Indigenous comments and perspectives in management plans, not just inviting comments (as required under the EPBC Act).
- Engagement processes for developing and implementing management plans and associated strategies should include the use of plain English materials and other user-friendly communication tools to ensure maximum understanding by Indigenous groups of the implications, impacts and opportunities associated with Commonwealth marine reserves.
- DSEWPAC should develop a comprehensive Indigenous engagement strategy to support Indigenous input into the planning and management of Commonwealth marine reserves, in addition to Indigenous engagement strategies attached to individual management plans.
- Indigenous engagement strategies should clearly explain the threshold level of Indigenous engagement required under various statutory provisions, consistent with Australia's national and international obligations.
- Indigenous engagement processes should reflect the complexity and diversity of Indigenous cultural, social, legal and other interests in sea country.

- Indigenous engagement needs to include direct engagement with local Indigenous groups and organisations in areas potentially affected by Commonwealth marine reserves.
- DSEWPaC can obtain advice from peak Indigenous organisations with statutory responsibilities for native title and other forms of Indigenous tenure regarding which Indigenous groups and organisations to engage with. These organisations include:
 - Land Councils (State/Territory, and Local);
 - Native Title Services organisations;
 - Registered Native Title Bodies Corporate (also known as ‘Prescribed Bodied Corporate’ or PCBs);
 - Land Trusts;
 - Community Councils.
- DSEWPaC needs to have a clear understanding of the role and responsibilities of the various local, regional or State/Territory Indigenous organisations referred to above.
- Indigenous engagement processes should enable Indigenous groups to consider risks to Indigenous values and interests associated with Commonwealth marine reserves – in addition to consideration of opportunities.
- Indigenous people are not “stakeholders”. Indigenous engagement processes should recognise that Indigenous people associated with sea country have nationally and internationally recognised rights for participation and benefit which are separate and distinct from the interests of “stakeholders”.
- Indigenous engagement processes should recognise, support and complement (and not conflict with) existing local sea country management capacity and momentum, including:
 - Sea country plans;
 - Indigenous Protected Areas;
 - Indigenous ranger groups and activities;
 - Native title claims and determinations;
 - Existing cultural mapping and other cultural information (subject to appropriate local access and use protocols);
 - Local Indigenous governance arrangements.
- Successful collaborative management and meaningful partnerships start with collaborative planning – hence the need for Indigenous engagement at the start of and throughout reserve management planning.
- Indigenous engagement process should explain to what extent and how cultural heritage is protected by Commonwealth marine reserves.

MANAGEMENT PRINCIPLES

Taking into account all the issues and concerns listed above, participants developed the following Management Principles to be included in management plans for Commonwealth marine reserves. These Management Principles are intended by the participants to guide and provide “hooks” for the development of appropriate management strategies and actions in collaboration with local Indigenous groups and organisations associated with each reserve.

Principle 1 (which could form a preamble to each management plan):

Indigenous people have been sustainably using and managing their sea country, including areas now included within Commonwealth marine reserves, for thousands of years – in some cases since before rising sea levels created these marine environments.

Principle 2:

Management of Commonwealth marine reserves should be undertaken on the basis that native title exists in sea country within Commonwealth waters.

Principle 3:

Indigenous people should be engaged in planning and managing Commonwealth marine reserves on the basis of their nationally and internationally recognised rights and cultural interests, not as a “stakeholder” group.

Principle 4:

Management plans should maximise opportunities for Indigenous People to enjoy the management and use of their sea country.

Principle 5:

Management plans should maximise opportunities for the development of Indigenous livelihoods, consistent with national ‘closing the gap’ commitments.

Principle 6:

Governance and management activities within Commonwealth marine reserves should respect and complement local Indigenous governance arrangements, plans, capacities and activities.

Principle 7:

Indigenous engagement in managing Commonwealth marine reserves should be undertaken through good faith negotiations, seeking to build on the common ground that exists between Indigenous people and the Commonwealth Government to protect and sustainably use Australia’s sea country environments and resources.

Principle 8:

Third party investment in management activities in Commonwealth marine reserves (e.g. through environmental offset investments) should include support for Indigenous peoples’ interests, capacity-building and development of livelihoods, consistent with all other principles outlined above; such third party investments must not impact on native title compensation negotiations.

Appendix 1: Invitation letter and background materials provided to participants ahead of the Forum

Text for the letter of invitation to comment on the intent to prepare management plans for the Commonwealth marine reserves and to participate in the Forum held on 5 December 2012 in Darwin.

Dear [],

I am writing to inform you that the proclamation of 40 new Commonwealth Marine Reserves has been completed and to invite your organisation to take part in a forum on 5 December 2012 to discuss interests and opportunities for engagement of Traditional Owners and other Indigenous people in the future management of the marine reserves.

The proclamation of the new Commonwealth Marine Reserves brings to an end the development of the Commonwealth waters component of the National Representative System of Marine Protected Areas (NRSMPA), as agreed to by all Australian governments in 1998.

For the first time, examples of the diverse range of marine ecosystems and habitats in Commonwealth waters and the biodiversity they support, have been included in Australia's reserve network. The new Commonwealth Marine Reserves add more than 2.3 million square kilometres to Australia's marine reserve estate, resulting in a total area of 3.1 million square kilometres of Commonwealth waters being managed primarily for biodiversity conservation.

Declaration of the new marine reserves is a major achievement for the long-term conservation and sustainable use of Australia's oceans and has been achieved with modest impacts on industry and recreational users. Native title rights are not affected by the establishment of the marine reserves. In identifying and selecting areas for the reserves the Government gave careful consideration to the interests of native title holders and comments received from Indigenous organisations during the public consultation period.

The new reserves came into effect on 17 November 2012. They comprise the Coral Sea Commonwealth Marine Reserve and the South-west, North-west, North and Temperate East Commonwealth Marine Reserves networks. In addition, four existing Commonwealth Marine Reserves have been renamed and incorporated into the North-west Network of Commonwealth Marine Reserves.

The reserves within each network will be managed under a network management plan, similar to the South-east Network Management Plan, a draft of which has recently been subject to public comment. While management plans for the new reserve networks and the Coral Sea Commonwealth Marine Reserve are being developed, transitional management arrangements will be in place. This means that until the new management plans come into effect on 1 July 2014, there will be no "on the water" changes for users in the new areas added to the Commonwealth Marine Reserve estate. The current management arrangements for pre-existing reserves (or areas within new reserves that were formerly reserves) will remain in place until the new management plans come into effect.

As management plans give definite form to access arrangements, the Minister intends to finalise the management plans as quickly as possible so that all marine users can have the stability required to operate and develop. To this end, Minister Burke has asked the Director of National Parks to commence the development of management plans. On 17 November 2012, the Director issued a notice of invitation for the public to comment on a proposal to prepare draft management plans for marine reserves under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). Comments have been invited on the management of the South-west, North-west, North and Temperate East Commonwealth

Marine Reserves networks, as well as on the management of the Coral Sea Commonwealth Marine Reserve. This first statutory public comment period is 30 days in duration and will close on 18December2012.

Once draft management plans have been prepared, taking into account the comments received in the first round of consultation, comments will be invited on the draft management plans during an additional 30 day period. It is expected that this second public comment period will commence in mid January 2013.

The department is keen to explore mutually beneficial opportunities to work with Traditional Owners and Indigenous organisations in the management of areas within the newly Proclaimed Commonwealth Marine Reserves network, both through the development of management plans and, more substantively, through on-going delivery of conservation management. In order to ensure as strategic and effective approach as possible, we are seeking to coordinate our engagement with the Indigenous community, in the first instance, through the Indigenous Advisory Committee established under the EPBC Act and Native Title Representative Bodies.

To begin this process the Department will be hosting a forum in Darwin at the North Australia Research Unit (NARU) Seminar Room, 23 Ellengowan Drive, Brinkin, on 5 December 2012 focusing on Indigenous peoples' interests in the management of marine reserves. The forum will cover the management planning process and discuss the current and future involvement of Indigenous people in sea country management, including in the marine reserves. This will be the first step in a process that will continue over the next 12 to 18 months. We are keen to gain a deeper understanding of your knowledge and expertise and the opportunities there may be to work with the Indigenous community in marine conservation management.

We would welcome the nomination of one or two participants from your organisation and, given the short timeframe, we would greatly appreciate your prompt advice on who will be attending on your behalf as we will need to arrange for travel and accommodation for participants as soon as possible; please contact tamara.walton@environment.gov.au to advise on attendees. We intend to provide confirmation of the venue and a detailed agenda for the forum closer to the date.

I welcome your organisation's comments on issues of relevance to management of the marine reserve estate at any time and encourage you to provide comments on the proposal to develop management plans. More information about the newly declared Commonwealth Marine Reserves is available at: www.environment.gov.au/marinereserves, including details of how to provide comments on the intent to prepare management plans.

If you would like to discuss the new reserves, current consultations and the forum, please do not hesitate to contact me on 03 6208 2922, by post to the address below or via email charlton.clark@environment.gov.au.

Yours sincerely

Charlton Clark
Assistant Secretary
Commonwealth Marine Reserves Branch
November 2012

Indigenous Forum Fact Sheet # 1

Prepared as background for the Indigenous Forum to be held in Darwin on 5 December 2012

Native Title & Commonwealth Marine Reserves

The newly proclaimed marine reserves do not affect the exercise of Native Title rights or the conduct of Native Title claims in accordance with the *Native Title Act 1993*.

- Section 8 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides that the Act does not affect the operation of the *Native Title Act 1993* and the *Aboriginal Land Rights (Northern Territory) Act 1976*. Both these Acts include provisions that preserve customary rights to use of land and waters.
- The Commonwealth Marine Reserves network does not impact on existing or future Native Title Determination Areas.
- In addition, s.359A of the EPBC Act provides that Commonwealth reserves do not prevent Indigenous persons from undertaking non-commercial hunting or food gathering or using the reserves for ceremonial and religious purposes.
- Indigenous organisations, including land councils and native title representative bodies, were consulted during the development phases of the Commonwealth Marine Reserves.
- As required under the EPBC Act, the Director of National Parks has written to the chairs/chairpersons of the land councils for areas adjacent to the reserves seeking their comments on proposals to prepare draft management plans for the reserves in each region.
- In preparing a management plan for Commonwealth reserves, the Director also must take account of the interests of the Traditional Owners of any Indigenous people's land in the reserve and any other Indigenous persons interested in the reserve.

Indigenous Forum Fact Sheet # 2

Prepared as background for the Indigenous Forum to be held in Darwin on 5 December 2012

Commonwealth Marine Reserves - Overview

Forty new Commonwealth Marine Reserves came into effect on 17th November 2012.

Marine protected areas in Commonwealth waters are called Commonwealth Marine Reserves and are established under the Commonwealth reserves provisions of the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*. Note: the Great Barrier Reef Marine Park is established under the *Great Barrier Reef Marine Park Act 1975*.

The Commonwealth Marine Reserves estate includes:

- the Coral Sea Commonwealth Marine Reserve
- the South-west Commonwealth Marine Reserves Network (14 separate reserves)
- the North-west Commonwealth Marine Reserves Network (13 separate reserves)
- the North Commonwealth Marine Reserves Network (8 separate reserves)
- the Temperate East Commonwealth Marine Reserves Network (8 separate reserves)
- the South-east Commonwealth Marine Reserves Network (14 separate reserves)
- the Heard and MacDonald Islands Marine Reserve

The new marine reserves, together with existing marine reserves and the Great Barrier Reef Marine Park, represent the Australian Government's contribution to the National Representative System of Marine Protected Areas (NRSMPA) and delivers on the government's domestic and international obligations to establish a representative system by 2012. The NRSMPA is the marine equivalent of the National Reserve System.

Commonwealth waters extend from the offshore boundary of state and Northern Territory waters (generally 3 nautical miles from the coastal baseline) to the edge of Australia's Exclusive Economic Zone (generally 200 nautical miles from the shore).

Within marine reserves, there are different types of zones, which determine where and what activities can take place.

Traditional uses, such as hunting and food-gathering (except for purposes of sale) and uses for ceremonial and religious purposes, are allowed in ALL zones.

Sanctuary and Marine National Park Zones provide the highest levels of protection and do not allow any extractive activities to be undertaken.

Habitat Protection and Conservation Park Zones allow some commercial and recreational activities to be undertaken.

Special Purpose, General Use and Multiple Use Zones allow most commercial and recreational activities to be undertaken.

Commonwealth Marine Reserves are managed by the Director of National Parks in accordance with provisions of the EPBC Act and associated regulations. Schedule 8 of the EPBC Regulations set out the Australian IUCN reserve management principles. These principles inform and promote the development of policies, management plans and operational procedures.

Management plans are now being prepared for the 5 Commonwealth Marine Reserves networks and the Coral Sea Commonwealth Marine Reserve (see the Fact Sheet # 3 - *Indigenous Engagement in Planning and Implementing Management Arrangements for Commonwealth Marine Reserves*). Management plans remain in place for 10 years after which they are reviewed and replaced by new management plans.

Transitional management arrangements are in place until management plans come into effect in July 2014. The management plan for the South-east Commonwealth Marine Reserves Network, which was established in 2007, will come into effect in July 2013.

In relation to new areas added to the Commonwealth Marine Reserves estate in November 2012, transitional management arrangements mean that there are no 'on the water' changes for users.

Indigenous Forum Fact Sheet # 3

Prepared as background for the Indigenous Forum to be held in Darwin on 5 December 2012

Indigenous Engagement in Planning and Implementing Management Arrangements for Commonwealth Marine Reserves

Development of Management Plans

Once a marine reserve has been proclaimed, the Director of National Parks must develop a management plan for the reserve in accordance with the relevant provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Director of National Parks proposes to prepare management plans for the Commonwealth reserves in the South-west, North-west, North, Temperate East and South-east Networks of Commonwealth Marine Reserves, and for the Coral Sea Commonwealth Marine Reserve.

The EPBC Act requires two periods of public consultation as part of the process for preparing management plans for Commonwealth reserves:

1) Comments have now been invited on a proposal to prepare a draft management plan for each marine reserve network and the Coral Sea Commonwealth Marine Reserve. This provides an opportunity to comment on what the management plan should cover. The statutory period for this first round of consultation began on **17 November 2012** and ends on **18 December 2012**.

2) Following the first round of public comments, draft management plans will be released for public comment for a period of least 30 days.

The management plans will then be finalised, taking account of public comments, and considered and approved by the Minister. A management plan, once prepared, may only be altered following the same statutory and consultative process used in its preparation.

Once management plans are prepared, further consultation will be undertaken to develop and implement specific elements of the management arrangements and strategies.

All management plans will include a strategy focussing on Indigenous engagement in the management of Commonwealth Marine Reserves.

Indigenous Engagement

The EPBC Act includes provision that require the interests of Indigenous peoples to be taken into account in the development of management plans for Commonwealth reserves:

The Director of National Parks must invite comments on the intent to prepare management plans from any land council for Indigenous people's land in the reserve (s.368(2))

The Director must take into account the interests of Traditional Owners of any Indigenous people's land in the reserve and any other Indigenous persons interested in the reserve (s.368(3)); and

The Director of National Parks must invite comments on draft management plans from any land council for Indigenous people's land in the reserve (s.368(5)).

The department has sought advice from the Indigenous Advisory Committee established under the EPBC Act on how best to engage with Indigenous organisations on the future management of Commonwealth Marine Reserves. This workshop is an important first step in helping the department to understand key interests and aspirations of Indigenous people for areas within Commonwealth Marine Reserves and ensure those interests are taken into account during the development of management arrangements.

This workshop is also a first step in exploring the opportunities that may exist for Indigenous participation in the management of Commonwealth Marine Reserves, which may include through existing programs such as the Caring for our Country, Working on Country and Indigenous Protected Areas programs.

Appendix 2: Slides from SEWPaC Presentations

Slide 1



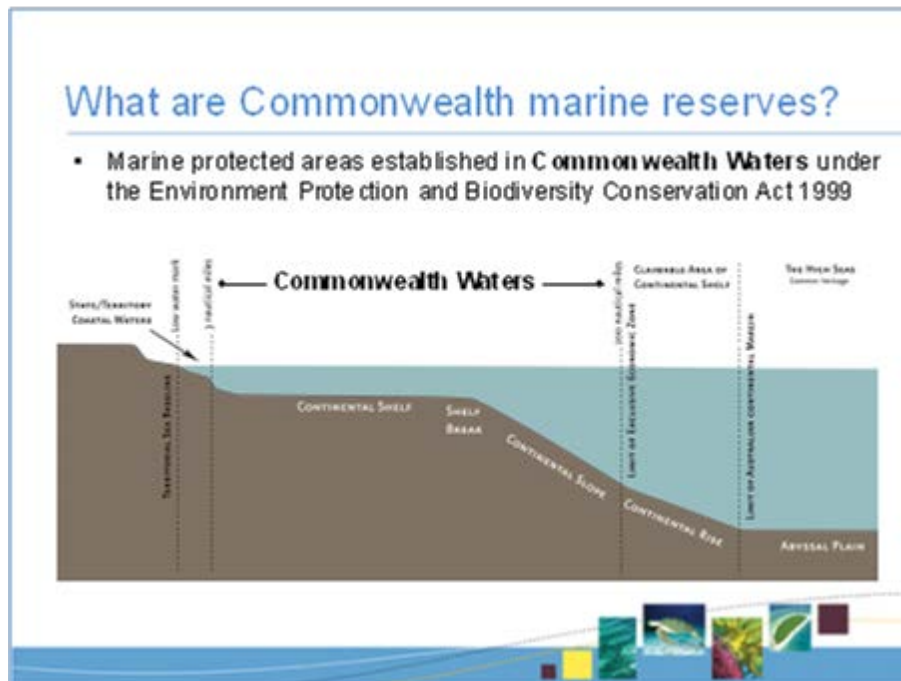
Slide 2

Objectives for today

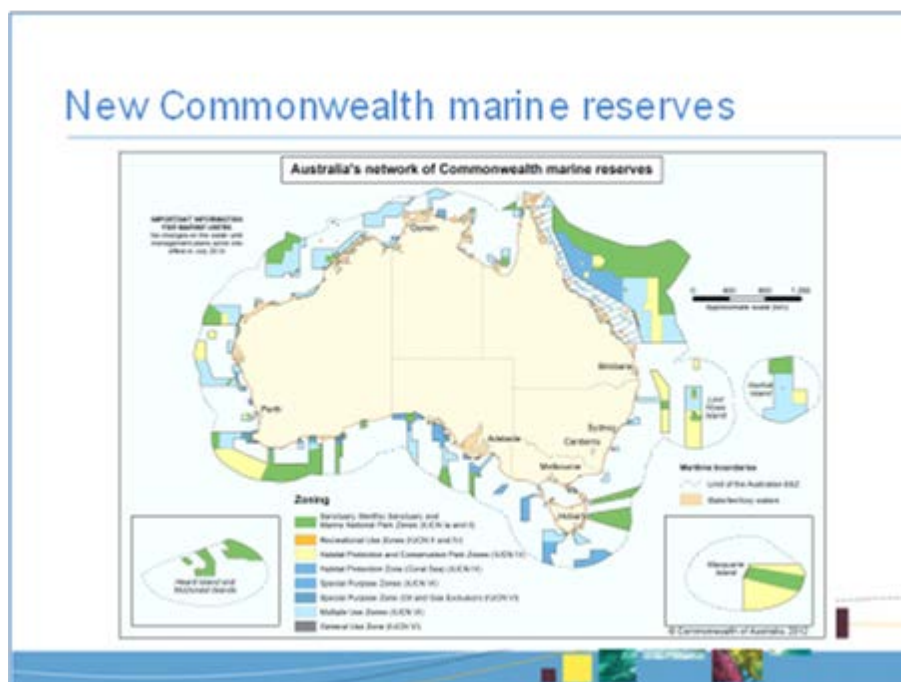
1. Provide information about the creation of new marine reserves under national environmental law (EPBC Act)
2. Explain the process for developing management plans for the new marine reserves
3. Begin exploring opportunities for Indigenous communities/organisations to participate in the management of the marine reserves

A decorative graphic at the bottom of the slide features a blue wavy line representing water. Above it, several small, colorful squares (yellow, green, blue, red) are arranged in a row, with some containing images of marine life like a fish and coral.

Slide 3



Slide 4



Slide 5

The Commonwealth marine reserves estate

- Part of the National Representative System of Marine Protected Areas
 - The national reserve system in the sea
- 59 Commonwealth marine reserves (CMRs)
 - Coral Sea Commonwealth Marine Reserve
 - 5 Regional reserves networks (made up of 57 reserves in the North, North-west, South-west, South-east and Temperate East regions)
 - Heard and Macdonald Islands Marine Reserve



Slide 6

What are Commonwealth marine reserves for?


- **Main objective: Biodiversity conservation**
 - Includes examples of all types of ecosystem, habitats and ecological communities
- **Other objectives:**
 - Provide for recreational, aesthetic, cultural and economic needs of indigenous and non-indigenous people
 - Provide for scientific reference sites
 - Provide for needs of species and ecological communities
 - Manage human activities



Slide 7

CMRs - Native Title and Indigenous interests

- CMRs do not impact on existing or future Native Title Determination Areas
- CMRs do not prevent Indigenous persons from undertaking non-commercial hunting or food gathering or using the reserves for ceremonial and religious purposes
- Specific requirements for Indigenous consultation in preparing the Management Plans for CMRs



Slide 8

Indigenous consultation - Legislative requirements

The Director of National Parks must:

- invite comments on the intent to prepare management plans from any land council for indigenous people's land in the reserve (s.368(2))
- take into account the interests of traditional owners of any Indigenous people's land in the reserve and any other indigenous persons interested in the reserve (s. 368(3))
- invite comments on draft management plans from any land council for indigenous people's land in the reserve (s.368(5))

Slide 9

Management of the reserves

- **Transitional arrangements until June 2014**
 - No "on the water" changes while management plans developed and implementation sorted out
- **Management Plans start in July 2014**
 - One Management Plan for each of the 5 Networks
 - One Management Plan for Coral Sea CMR

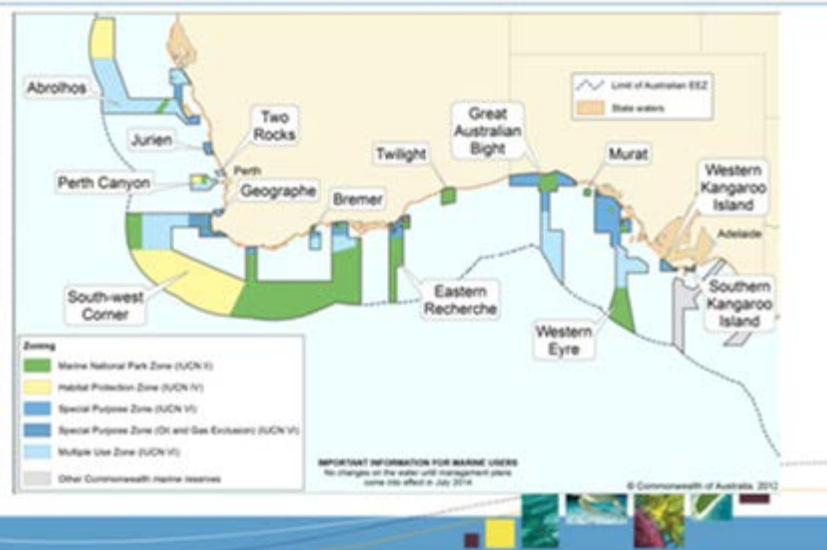
Slide 10

Planning regions and networks

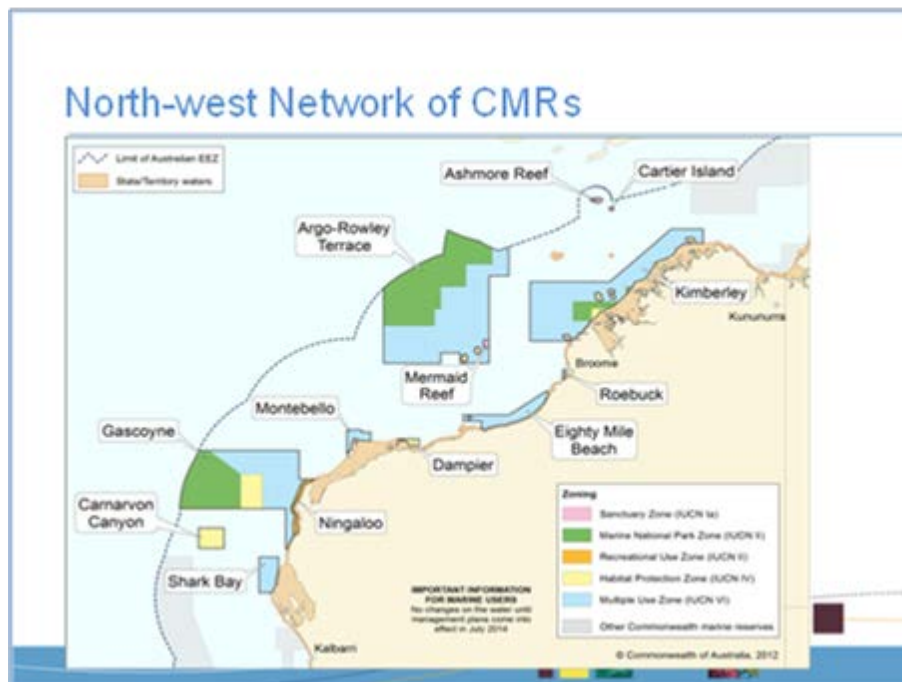
- 6 large marine regions
 - South-west
 - North-west
 - North
 - Coral Sea
 - Temperate East
 - South-east

Slide 11

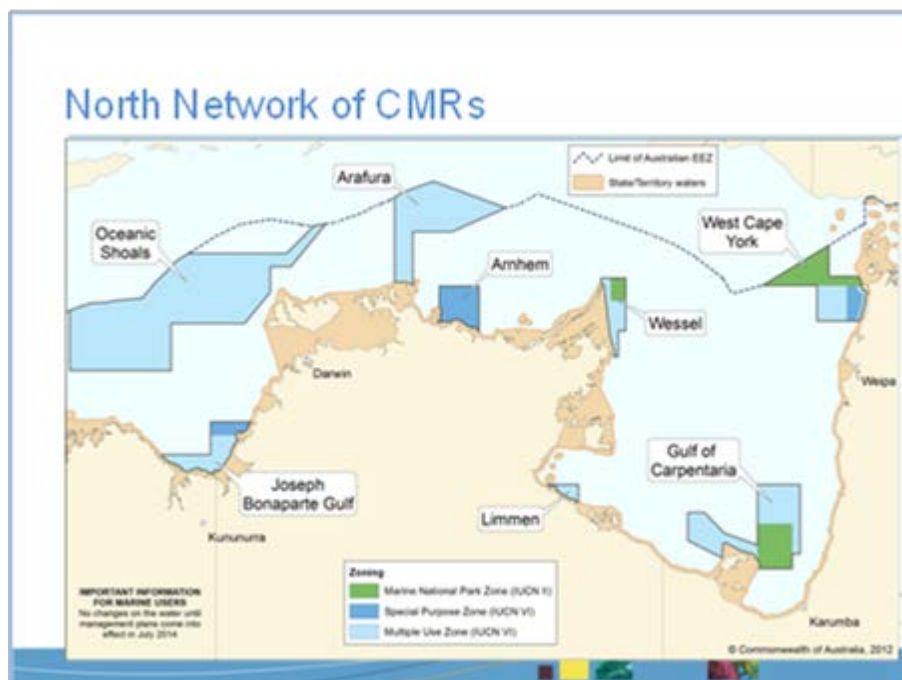
South-west Network of CMRs



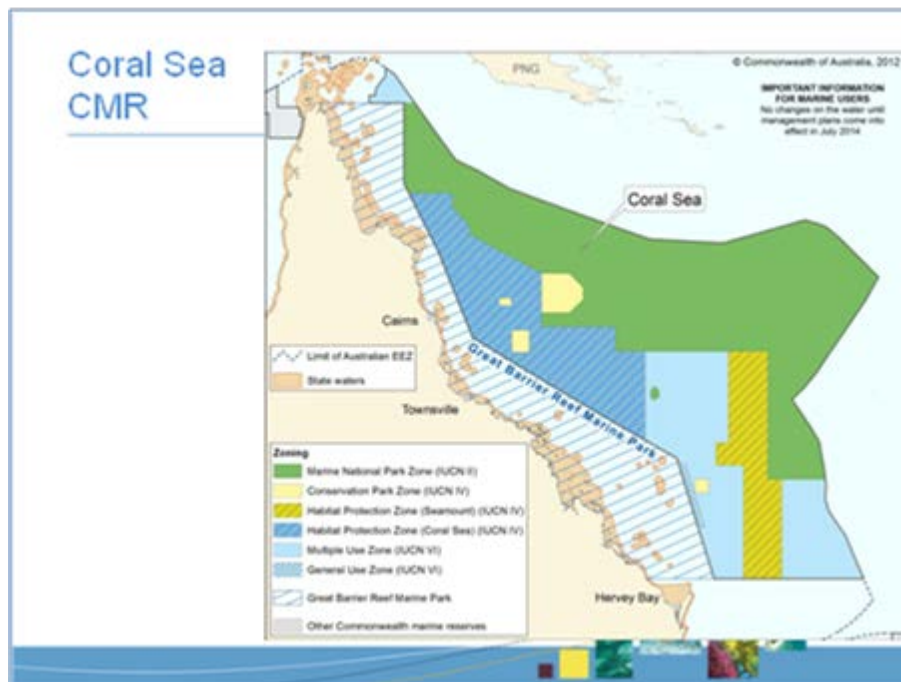
Slide 12



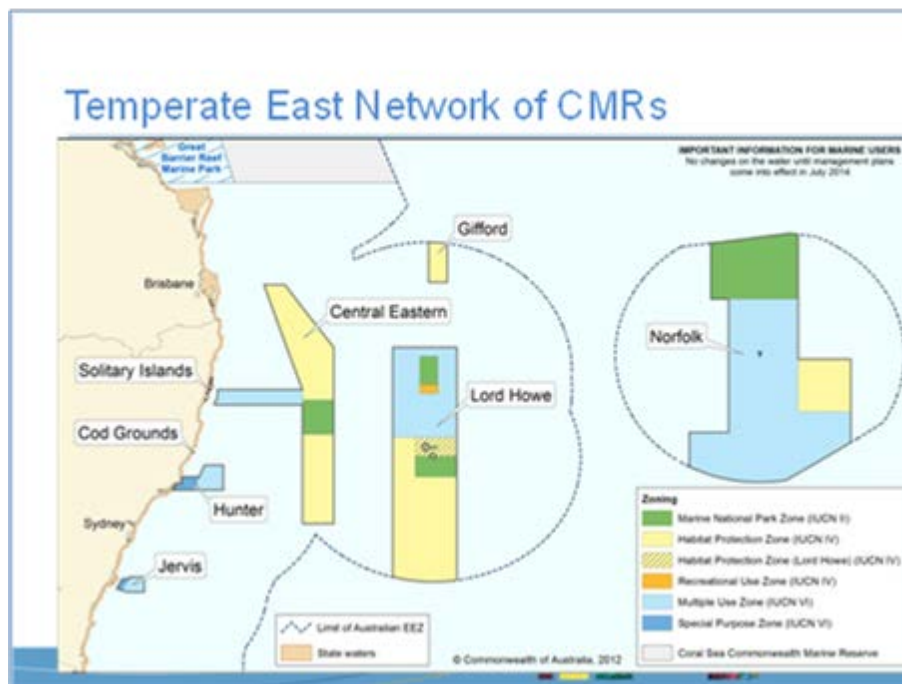
Slide 13



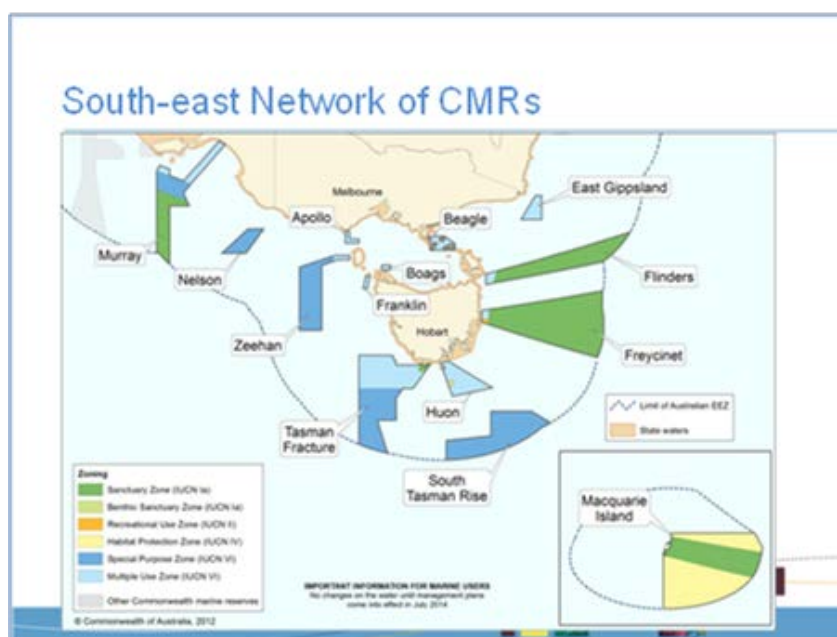
Slide 14



Slide 15




Slide 16



Slide 17

Management Plans


- Made under national environmental law (EPBC Act)
- Plans in place for 10 years
- Plans are not detailed – they will provide a framework for management
 - allow for activities that would otherwise be prohibited (done through zoning)
 - set out network-wide strategies
 - Management detail for individual reserves and key tasks (e.g. compliance and monitoring) will be developed separately



Slide 18

Contents of Management Plans

1. Objectives
2. Description, values, uses, pressures
3. Assigning zones
4. Management strategies and actions
5. Management prescriptions for uses
6. Maps of reserves and overview of governance




Slide 19

Type of Zones

Traditional uses are allowed in ALL zones

- IUCN Cat Ia / II - high level of protection
 - Sanctuary
 - Marine National Park
- IUCN Cat IV - some activities allowed
 - Habitat Protection
 - Conservation Park
- IUCN Cat VI - most activities allowed
 - Special Purpose
 - Multiple Use
 - General Use



Slide 20

Management Strategies

1. Improve knowledge of conservation values and pressures
2. Minimise impacts
3. Protect from incidents
4. Facilitate compliance through education
5. Promote community understanding and stakeholder participation
6. Support involvement of Indigenous people
7. Evaluate and report on effectiveness of management



Slide 21

Management Prescriptions

The nuts and bolts of the management plans

1. Permits and approvals
2. General use and access
3. Commercial shipping
4. Commercial and recreational fishing
5. Commercial tourism
6. Mining operations
7. Structures and works
8. Research and monitoring
9. Defence, border protection and emergency response
10. New activities



Process to develop & implement Management Plans

- First 30-day consultation – intent to prepare Plans
 - 17 Nov – 18 Dec
- Second 30-day consultation – draft Management Plans
- Submissions considered
- Management plans finalised and approved by Minister
- Continuing consultation on implementation
- Coming into effect:
 - South-east Network Management Plan – July 2013
 - All other Management Plans – July 2014

