

Supplementary Work Instructions - Batons and Handcuffs and Commonwealth Marine Parks

The Commonwealth Government has a network of Marine Parks surrounded by NSW waters. Parks Australia currently contracts the Department to enforce the Solitary Islands Marine Park (SIMP), Cod Grounds Marine Park (CGMP) and potentially other Commonwealth Marine Parks in the future. Pimpernel Rock (within SIMP) and the Cod Grounds are both prescribed National Park Zones under the *Environmental Protection and Biodiversity Conservation Act 1999* and its Regulations (EPBC). Some NSW Fisheries Officers have been appointed as 'wardens' under *Section 392 Appointment of wardens and rangers* under the EPBC. The predominant duties for officers when working as wardens are these two National Park Zones.

Both SIMP and CGMP are within 12 Nm of the NSW coastal baseline. This means that under a cooperative scheme between the Commonwealth and the States under the *Commonwealth Crimes At Sea Act 2000*, that New South Wales (NSW) criminal laws apply extraterritorially. FOs under the *NSW Weapons Prohibitions Act 1998* via a permit, can lawfully possess and use batons and handcuffs in NSW, and in turn due to the before mentioned cooperative scheme, can lawfully possess and use batons and handcuffs in the SIMP & CGMP.

In addition to the above, where officers are exercising powers under the *Fisheries Management Act 1994* (FMA) co-jointly with powers from another Act, it is lawful for them to possess and use batons and handcuffs. It should be noted that the use of a baton under any circumstance, needs to be reasonable and justified as per the training officers receive and the respective work instructions. This is no different whether an officer is in NSW or in any other jurisdiction where they can lawfully possess a baton. Technically, officers will be using powers co-jointly, under both the FMA and the EPBC when conducting patrol work in the SIMP and CGMP. This is due to the fact that they will be enforcing both NSW fishing rules and regulations under the FMA and Commonwealth fishing rules and regulations under the EPBC.

Officers should make it clear to all fishers when they are inspecting them, which legislation they are operating under. If an officer is going to co-jointly exercise powers, they should introduce themselves as both a Fisheries Officer and a Warden. They should also further communicate to the fisher during the inspection, which powers they are using and under which authorisation.

Powers

Wardens have specific powers under the EPBC that allow them to investigate if they find someone committing an offence in a marine park. Some relevant powers are;

- Sec 444 Power to require a person's name and address
- Sec 403 Bring a vessel to nearest port
- Sec 403 Require master to bring vessel to nearest port
- Cl 12.60 Direct a person or vessel to leave a reserve

Accompanying this work instruction is a quick guide to a warden's powers under the EPBC, which gives a more comprehensive list of powers.

Offences

The two most common offences relating to the SIMP and CGMPs are;

- *Cl12.23(1) Enter Commonwealth reserve in contravention of a prohibition/restriction*
- *Cl12.56(1) Use fishing vessel in Commonwealth reserve*

Officers have a number of options when they find a vessel committing an offence within a CMR;

1. Stopping, boarding and searching the vessel.
2. Stopping the vessel and directing the master of the vessel to the nearest port where further enquiries can be made with the occupants.
3. Stopping the vessel, keeping the patrol vessel alongside and all FOs remaining onboard the patrol vessel.

Regardless of which option is taken by officers, the necessary evidence should be attempted to be obtained to establish an offence under the EPBC where possible. Such as;

- the vessels coordinates recorded either from the patrol vessels chart plotter, or the offending vessel's chart plotter or both;
- the name and address of the offenders;
- seizure of fish or gear;
- questions under caution (record of interview);
- photographs and video.

Parks Australia have specified that under the current COVID-19 conditions, they do not require vessels connected with offences to be boarded or records of interview conducted. Officers should collect as much evidence as possible, refer the matter to Parks Australia and they will conduct any further enquiries.

This position is supported by NSW DPI Fisheries as it is in line with the *Supplementary Work Instructions for Fisheries Officers for COVID-19* (INT20/39794). When officers detect offences, they should be able to collect enough evidence to meet the proofs of the relevant offences by adopting Option 3 above.

If an officer feels that they need more evidence or need to search the vessel, they can adopt Option 2 and direct the vessel to the nearest port to gather the required evidence in a safe manner. Alternatively, if officers feel it is safe under the current conditions to board a vessel, they still have discretion to adopt this option.

Reporting Requirements to Parks Australia

Pre-Patrol Reporting:

- To be confirmed via telephone to Marine Parks Duty Officer (0419 293 465) or email marine.compliance@environment.gov.au five business days prior (where possible). To enable consideration of aerial surveillance involvement or other Parks Australia participation or support.

Post Patrol Reporting:

- Reported through email to marine.compliance@environment.gov.au and Parks Australia Contract Officer within five (5) business days of completion of a patrol. Essential fields to include:
 - [Name of marine park] Marine Park patrol
 - day/date/month/year (e.g. Sat 01 Feb 19)
 - Reason for patrol (e.g. scheduled/discretionary/fishing comp/full moon/intel targeted)
 - Marker buoy condition assessment: (e.g. Good/Fair/Poor/Missing) and a supporting photograph.
- Vessel patrol track to be attached and submitted as a Navionics kml file (recorded on a marine App)

Incident Response Reporting:

- The Marine Parks Duty Officer to be advised as soon as possible, but no later than 24 hours after an incident via 0419 293 465 or marine.compliance@environment.gov.au

Full report of incident forwarded to marine.compliance@environment.gov.au within one business day of completion of patrol and submitted in accordance with the Incident Report Form at Annex 2-A.

Outcome:

Parks Australia will provide information on the outcome, which will need to be updated in Nautilus by the reporting officer.