



Department of
Transport

Mooring Regulation Streamline Review

2014-2016



Contents

Background	3
Current regulations	4
Mooring Regulation Streamline Review	5
Consultation	6
Stage One consultation	6
Stage Two consultation	7
Final Mooring Management Position Paper	7
Outcomes	7
1. Provide a single set of mooring regulations	7
2. Establish classifications of moorings	8
3. Short-term casual use of vacant recreational moorings	9
4. Improved administration of mooring licences	11
5. Ensure equal and fair access to moorings and prevent moorings gaining proprietary value	11
Authorised use	13
Implementation	14
Acknowledgments	14

Background

In 2014 the Department of Transport (DoT) commenced the Mooring Regulation Streamline Review (the Review) seeking to improve the way moorings are managed in Western Australia. The main aim of the Review was to establish a single State-wide set of mooring regulations and a more efficient management system to be administered by DoT for the benefit of all boat users. The development of a fairer and more equitable system for the management of moorings throughout WA was set as the key outcome of the Review.

DoT currently administers approximately 1,200 moorings within the Swan Canning Riverpark Mooring Control Area (MCA) under the Mooring Regulations 1998. DoT also administers approximately 1,000 moorings in four other MCAs located in Rockingham, Peel, Albany and Carnarvon covered by the Shipping and Pilotage (Mooring Control Areas) Regulations 1983.

Additional to approved moorings, DoT is aware of approximately 1,500 moorings in waters under DoT's jurisdiction that are outside of current MCAs. These unlicensed moorings are not subject to any regulations and in some instances represent a hazard to other aquatic users and the environment.





Current regulations

The Mooring Regulations 1998 were developed in response to a proliferation of moorings in the Swan and Canning rivers that were then subject to minimal controls. A decision was made at that time not to utilise the existing Shipping and Pilotage (Mooring Control Areas) Regulations 1983 as they had been framed for a very simple mooring control environment and had limited usefulness in situations of greater complexity such as the Swan and Canning rivers. It is interesting to note that almost two decades ago the underlying principle for the establishment of the Mooring Regulations 1998 was also to provide “fair and equitable access”.

In line with this principle, the Mooring Regulations 1998 provide a licensing system reflecting a clear and accepted policy position that there is no proprietary value to the mooring site licence beyond the mooring apparatus itself. This is further supported by the requirement that licensees reapply for a licence on an annual basis and the placement of restrictions on the ability to transfer a mooring site licence.

The regulations also recognise that moorings in the Swan and Canning rivers could reach capacity and a wait list is a mechanism to ensure fair access to the limited number of moorings in the waterway.

Since 1998 these regulations have been used to administer approved mooring sites on the Swan and Canning rivers, although a wait list has not been declared due to its inflexibility on the issuing of a mooring site licence other than to the next applicant on the list.

It was the intent that the Mooring Regulations 1998 would over time be used for other MCAs. However, due to a number of other unintended restrictions, the Shipping and Pilotage (Mooring Control Areas) Regulations 1983 were instead used to administer new MCAs at Rockingham, Albany, Carnarvon and Peel as an interim measure until amendments could be made to the Mooring Regulations 1998.

The urgent requirement for amendments to the Mooring Regulations 1998 together with issues such as the growing demand for short-term access to moorings, the notable underutilisation of approved moorings and the need for clearer classification of moorings highlighted the need for a major review of mooring regulation and administration in WA.

Mooring Regulation Streamline Review

The Review project plan was developed and approved by the Minister for Transport in 2014. The plan included the establishment of a key stakeholder working group with representatives from across the boating community including:

- Boating Western Australia;
- Yachting Western Australia;
- Boating Industry Association;
- Recfishwest; and
- Western Australian Mooring Association.

Government agencies and industry groups with direct involvement in the administration of moorings were also invited to participate, including:

- Rottnest Island Authority;
- Department of Parks and Wildlife;
- Ports WA;
- Royal Australian Navy; and
- Chamber of Minerals and Energy WA (as a representative of moorings users in the resource sector).

To maintain transparency and independence throughout the Review, through a tender process DoT engaged the services of consultants to assist with the preparation of a consultation plan, facilitation of key stakeholder working group and public information sessions as well as providing independent analysis of public and stakeholder feedback.

The review was underpinned by a two-stage consultation process, with each stage providing opportunity for community feedback to assist DoT in developing improved mooring regulations for WA.



Consultation

A consultation plan was developed to ensure stakeholders and users most affected were informed of the Review and able to provide input. The plan included a two stage consultation process with a discussion paper as the basis for consultation in stage one and in the second stage a position paper based on feedback gained in the initial stage.

Feedback received in both consultation stages was carefully considered and used in the formulation of the *Final Mooring Management Position Paper* which will guide the mooring reform process in WA.

Stage One consultation

An initial *Mooring Management Discussion Paper* was developed by the DoT project team in consultation with the key stakeholder working group, based on the same underlying “fair and equitable” principle used in the initial drafting of the Mooring Regulations 1998. It outlined the key principle of the Review, the main objectives and proposed strategies, to be delivered through legislative amendment. The discussion paper clearly set out five key objectives to guide possible change.

The discussion paper was released for comment on March 1, 2015 and the submission period closed on May 8, 2015. To engage the community DoT offered an online survey supported by dedicated website material, an information line, a direct mail campaign targeting mooring owners, media statements, newsletter updates and social media posts.

In addition, two community presentations were also held in Bicton and Rockingham. These sessions were predominantly attended by mooring licensees and registered mooring owners.

During this first stage of consultation DoT received more than 500 completed surveys from throughout WA, with the majority responding positively to all five key objectives.



Consistent levels of support for all 5 objectives

TOTAL SUPPORT (strongly+mildly)

84%

a classification system of mooring use



79%

improved administration



78%

a single set of regulations

1

76%

an opt-in system for short-term casual use



65%

prevent moorings gaining proprietary value



The Western Australian Mooring Association (WAMA) was established by a group of mooring licensees and registered mooring owners during the initial consultation stage and it was subsequently invited to join the key stakeholder working group.

Stage Two consultation

Developed using the feedback from the working group and the comments gained during the Stage One consultation, a more detailed *Mooring Management Position Paper* was released for public comment on October 11, 2015 and submissions accepted until November 20, 2015.

The position paper included questions to gauge support for specific changes proposed for each objective.

Consultation and engagement activities mirrored Stage One, including a second more detailed survey on the DoT website and information sessions were again held at Bicton and Rockingham.

The feedback included more than 300 completed surveys along with several detailed submissions and independent analysis of the comments showed there had been a decline in support for each objective.

During this second stage of consultation WAMA undertook a concerted 'No' campaign across all objectives providing instructions to members to strongly oppose all objectives and negatively answer all questions.

This was responsible for a significant reduction in support for all five objectives recorded during the first round of consultation.

The independent analyst advised that the responses were generated through a self-selecting survey and concluded the results could not be guaranteed as totally representative of the boating community's sentiment.



Mixed levels of support for the 5 objectives

TOTAL SUPPORT (strongly+mildly)

47%

improved administration



46%

a classification system of mooring use



46%

a single set of regulations

1

35%

an opt-in system for short-term casual use



23%

prevent moorings gaining proprietary value



Final Mooring Management Position Paper

DoT's position in regard to how moorings can best be managed in WA has evolved during the Review as a result of further consideration by the project team and analysis of feedback from a range of sources.

The *Final Mooring Management Position Paper* was endorsed by the Minister for Transport in July 2016 clearing the way for its implementation as outlined in the document.

Outcomes

The Review objectives are provided below along with the outcome of consultation and outline of the final position.

1. Provide a single set of mooring regulations

A key aim of the review was to amend the Mooring Regulations 1998 to cover all moorings throughout the State under DoT's jurisdiction and to enable them to be managed through the provision of a licence, to provide a more consistent less confusing system for boat owners. This objective received 78 per cent support in Stage One and no changes were proposed in Stage Two.

Although there was a drop in support to 47 per cent in Stage Two, DoT maintains that managing moorings under a single set of regulations is the most appropriate and sensible approach.

DoT will amend the Mooring Regulations 1998 to give effect to the *Final Mooring Management Position Paper*. DoT will then transition existing MCAs administered under the Shipping and Pilotage (Mooring Control Areas) Regulations 1983 to the amended Mooring Regulations 1998. Once complete DoT will then systematically declare MCAs throughout State waters to cover the estimated 1,500 unlicensed moorings, as well as existing commercial resource moorings licensed under the *Western Australian Marine Act 1982*.

2. Establish classifications of moorings

The initial *Mooring Management Discussion Paper* proposed to introduce classes of moorings to reflect the different uses and associated administration requirements for each. The aim was to clarify or define the use of each type of mooring so that each class of mooring would be subject to appropriate regulations and terms and conditions that would ensure equitable and safe use.

Classes proposed include:

- Recreational
- Commercial
- Courtesy
- Rental
- Emergency
- Special Purpose
- Club.

Strongly supported with 84 per cent agreement, there were limited changes to the proposed classification system in Stage Two other than the introduction of a Commercial Resource mooring class and removal of the Club class.

Commercial Resource moorings were introduced to reflect the additional complexity of large moorings in the North West associated with the oil and gas industry.

The removal of the Club mooring classification was due to an alternative management arrangement being agreed upon by the relevant State authorities. It was decided that a mooring area licence under the *Western Australian Marine Act 1982* and river reserve lease under the *Swan and Canning Rivers Management Act 2006* would be a more effective management option.

Additional detail on the management of each mooring classification was also provided.

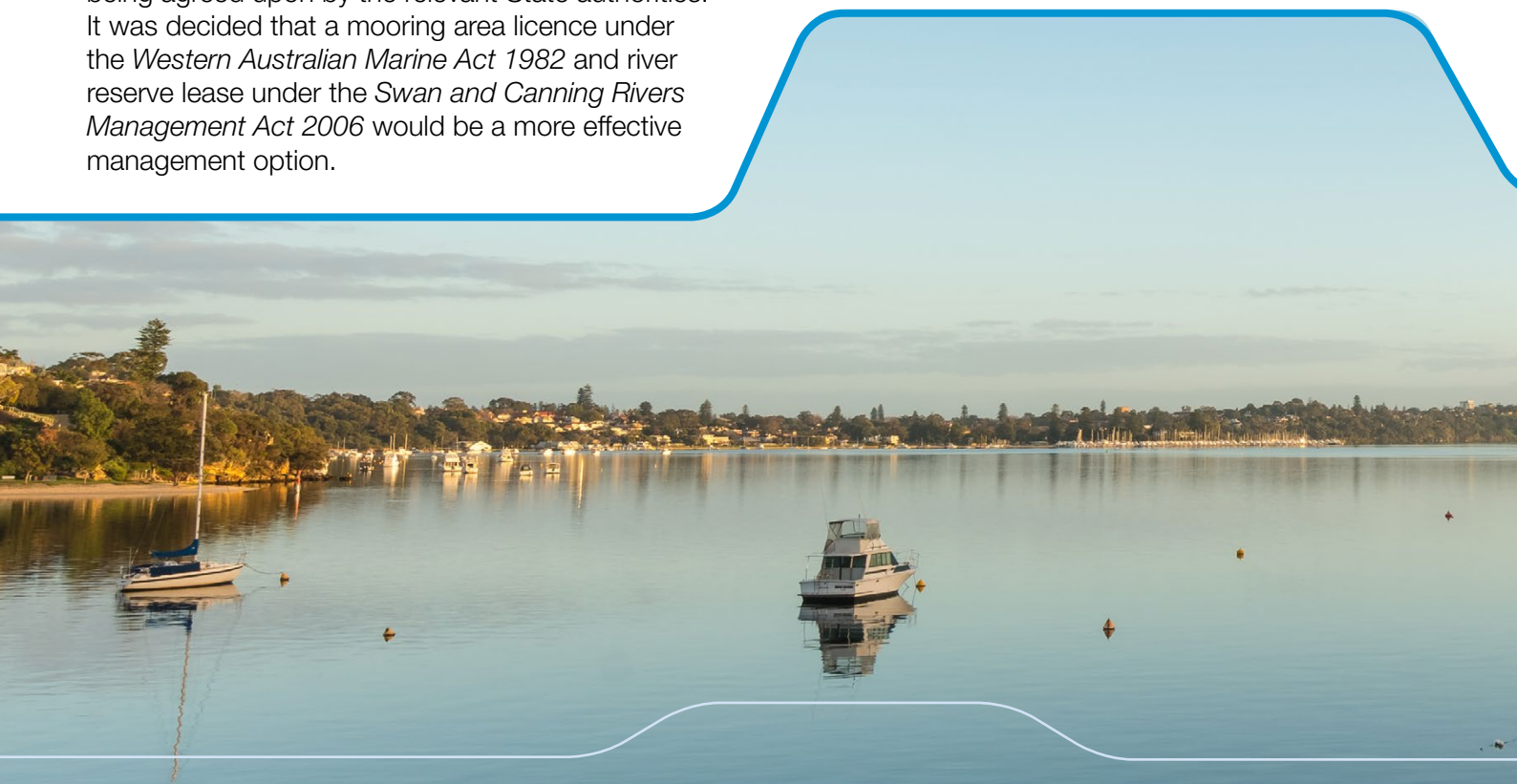
A drop in support to 46 per cent was noted in the second stage of consultation. Limited alternatives were suggested through the consultation process and the drop in support is likely to be attributed to the concerted 'No' campaign.

DoT will amend the Mooring Regulations 1998 to include the following classes of moorings:

- Recreational
- Commercial
- Commercial Resource
- Courtesy
- Rental
- Emergency
- Special Purpose.

All classes will be subject to individual conditions:

- Licences to be issued for a 12 month period with licensees invited to reapply annually
- Licences are non-assignable
- Moorings are not to be sub-let or leased
- Inspection reports will be required on request.



3. Short-term casual use of vacant recreational moorings

A casual use model was proposed which gave the recreational mooring licensee priority use of their mooring at all times. The intent of the model is that should a mooring licensee not be using their mooring, then another compliant vessel may use the mooring for a limited time or until the mooring licensee requires the use of the mooring.

Short-term casual mooring users would be provided with identification for this purpose. In addition, a fee to register vessels participating in the system was to be introduced to offset administrative costs. All recreational moorings were proposed to be part of this system with no provision to opt-out.

Recording 76 per cent support in Stage One it was recognised there was some concern over the short-term casual use system. DoT's position remained firm in Stage Two that a casual use system was a common sense approach to facilitate the effective and efficient use of existing infrastructure.

Additional detail was provided in the *Mooring Management Position Paper* including vessel size classification and proposed coding system which was based on the Rottneest Island Authority Shared Mooring System. It was also proposed that mooring licensees have automatic access to the system with other vessel owners having to apply, and that it was a self-policing system and the mooring licensee retained priority access to their mooring.

This generated some notable concern during Stage Two of the consultation with a significant drop in support and concerns raised by mooring licensees and registered mooring owners about possible damage to their moorings and offset of fees. These concerns were carefully considered by the project team and the key stakeholder working group.

The final position is a result of compromise, and provides the ability for recreational mooring licensees to apply to opt-in or opt-out of the short-term casual use system at the time of applying or renewing their recreational mooring site licence.

Recreational mooring licensees who participate in the short-term casual use system will pay a reduced annual licence fee, maintain priority access to the mooring site and receive automatic access to other available moorings within the system.

Licensees who opt-out will pay the full annual licence fee, have exclusive use of the mooring site and will not receive automatic access to other available moorings within the short-term casual use system unless they pay for the required permit.

In establishing short-term casual use the terms and conditions of recreational moorings will be amended to allow third party access to the licensee's mooring apparatus under the following conditions:

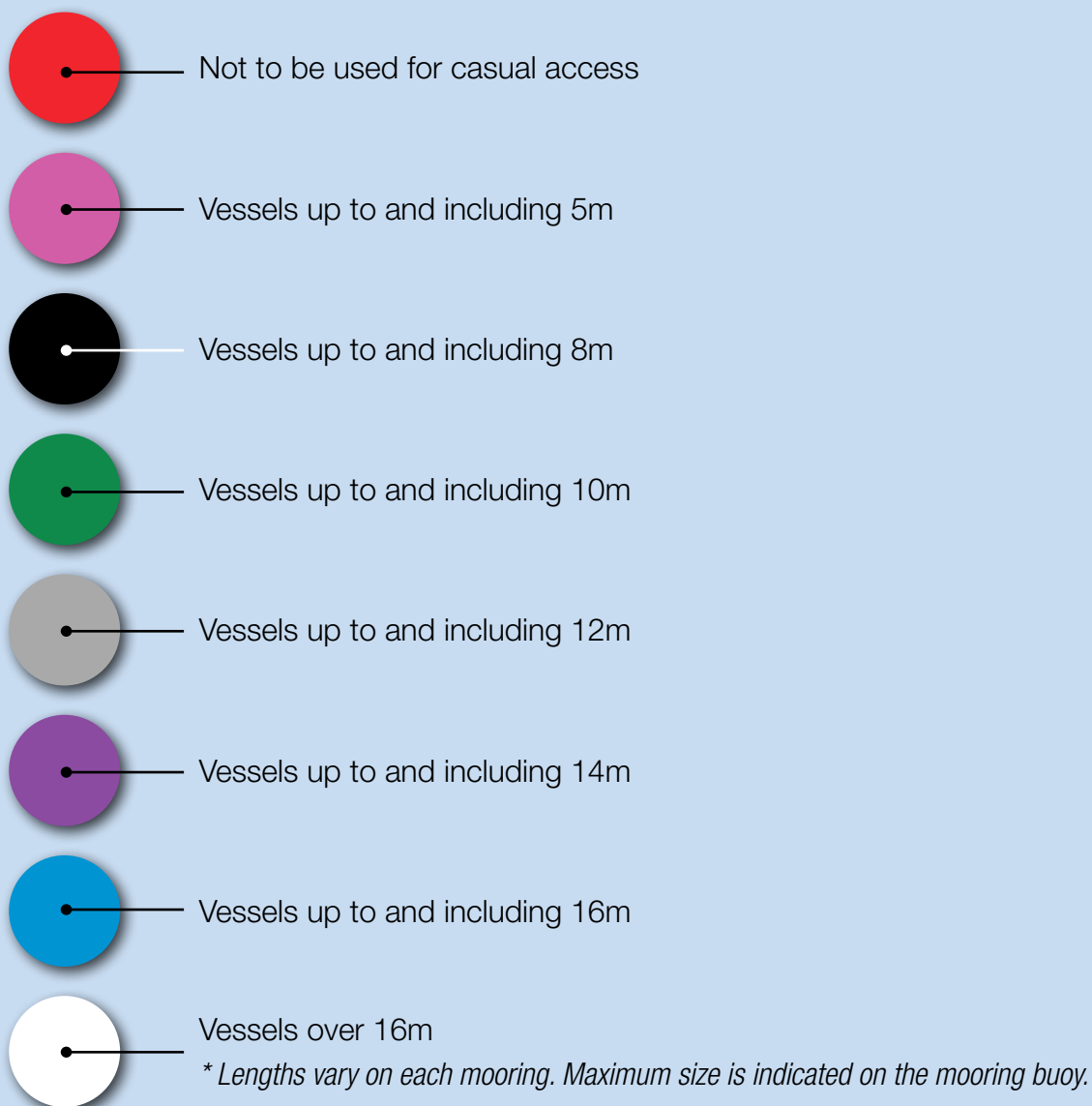
- All recreational moorings will be marked with a coloured disc provided by DoT, similar to those found on moorings around Rottneest Island, to be installed by the licensee's contractor.
- The disc will be used to identify mooring size limits. This will ensure that larger vessels don't attempt to secure to smaller mooring sites.
- Recreational mooring licensees retain priority use of their mooring site at all times. Should a licensee return from their voyage to find a vessel secured to their mooring, they will be able to request the vessel skipper immediately move the vessel.
- The mooring of licensees who opt-out of the system will be marked with a red disc identifying them as not available for short-term casual use.



Seeking access to the short-term casual use system:

- Vessel owners need to apply to DoT for a short-term casual use permit that will allow them to use an appropriate sized mooring for short periods of time - up to a maximum of four hours during daylight hours or overnight from 7pm to 7am when not being used or required by the mooring site licensee.
- DoT will provide a sticker that must be displayed on the vessel at all times. Permits will be issued to the vessel and remain with the vessel if sold.
- A holder of a Recreational Skipper's Ticket will be required to remain on board the vessel at all times when it's secured to a mooring to ensure the mooring licensee can access their mooring upon request.
- Penalties will apply for misuse of the system such as not vacating a mooring when requested to by the mooring licensee.

Mooring disc key



4. Improved administration of mooring licences

The primary aim of streamlining the administration of mooring regulations is to introduce a system that provides more equitable access to moorings and ensures they are safe and well managed for the benefit of boat users and the environment.

In the initial survey, strong support at 79 per cent was noted for the proposal to improve administration and no changes were proposed from the discussion paper to the position paper other than some additional detail.

The second stage consultation saw a drop in support to 47 per cent. However, a majority of this decline can be attributed to the concerted 'No' campaign.

DoT remains of the belief there is a benefit in administering all moorings within DoT's jurisdiction under an amended Mooring Regulations 1998 noting that efficiencies will be gained through the implementation of one system.

The establishment of the classification of mooring licences will also provide greater clarity for both DoT and the boating public on the types of moorings available and their use through clearer consistent terms and conditions.

5. Ensure equal and fair access to moorings and prevent moorings gaining proprietary value

The discussion paper highlighted the objective to limit the potential for a mooring licence to gain monetary value, and to ensure there is no incentive for a licensee to retain a mooring that is not being used for its intended purpose. The discussion paper introduced the idea of controls on the transferability of licences with a preference that licences be relinquished to DoT to be reallocated.

A total of 65 per cent support was received for this objective. It had been a well covered topic in consultation during Stage One and DoT's position was clearly articulated in the second stage *Mooring Management Position Paper* in that there would be no transfer of mooring site licences with licences to be relinquished to DoT for reallocation.

Details on the management of a wait list was provided including noting a MCA may be divided into zones, only one application per vessel would be permitted and DoT may request confirmation or updates of details of these applicants on the wait list.

It was also reiterated that DoT intended to have the ability to offer a mooring licence to a person not listed on the wait list in particular circumstances. An example being deceased estates, where an immediate family member is gifted a vessel as part of a deceased estate which is the primary vessel on a mooring site licence. Under this circumstance DoT would consider issuing a licence outside of the wait list to the beneficiary. However, the new licence would have special conditions such as not being able to substitute the vessel.

This proposal saw the biggest drop in support of any objective, dropping to 23 per cent in Stage Two. The issue drew criticism from a concerted group of mooring licensees who are thought to have paid in excess of \$10,000 for a mooring site licence through transfer of vessels. This was also one of the most discussed topics throughout the consultation process.

The establishment of wait lists is not a new concept for DoT and it has been a long-standing practice for distribution of boat pens administered by DoT.



DoT maintains the position as was the intent of the current mooring regulations that there is no proprietary value in mooring site licences and proposes to manage this through the implementation of a wait list in line with the existing mooring regulations with slight amendments as outlined below.

MCA not at capacity (no wait list in place)

- When a vessel is sold and the new owner wishes to retain the mooring site and apparatus, the previous owner will relinquish the mooring site licence to DoT. Upon application by the new owner DoT may issue a new mooring site licence over the existing site.
- As is currently the case, if there is already a mooring apparatus on the site, both parties, if they agree to DoT sharing their contact details, can negotiate the possible purchase of the apparatus.

MCA at capacity (a wait list in place)

- When a wait list is invoked then the issuing of a mooring site licence will be via the wait list. Therefore when a vessel is sold, the new owner (purchaser) will need to find alternative storage for the vessel.
- DoT will then issue the mooring site licence to the next person on the wait list.
- As is currently the case, if there is already a mooring apparatus on the site, both parties, if they agree to DoT sharing their contact details, can negotiate the possible purchase of the apparatus.

→ DoT will be able to offer a mooring site licence outside the wait list under special circumstances:

- the beneficiary of a vessel from a deceased estate, in which the vessel is the primary vessel on the mooring site, will be able to apply to DoT for a new mooring site licence outside of the wait list to allow the beneficiary the ability to deal with the vessel;
- the purchaser of a vessel that has been predetermined to be of such a size or configuration that it could not be reasonably stored elsewhere will be able to apply to DoT prior to the finalisation of sale to determine if DoT will consider issuing a new mooring site licence outside of the wait list;
- in instances of joint ownership where the licensee wishes to sell the vessel to an existing long-term shared owner (greater than 25 per cent ownership for a minimum period of 12 months), DoT may consider issuing a licence outside of the wait list process.

→ In each instance that a new licence is granted outside of a wait list, unique conditions may be attached to the new licence to ensure that the wait list is not being unfairly circumvented.



Authorised use

Authorised users of recreational moorings were not addressed in the initial discussion paper. However, under the proposed development of the short-term casual use concept the authorised user system as administered under the Mooring Regulations 1998 and the Shipping and Pilotage (Mooring Control Areas) Regulations 1983 was identified by the project team as an unnecessary complication to the system. DoT was also aware via advertisements on numerous forums the practice of subleasing of moorings for commercial gain. In response to this, a proposal was put forward in the second stage *Mooring Management Position Paper* to cease authorised use.

This proposal generated significant feedback from the key stakeholder working group and the community with 70 per cent of respondents strongly objecting to the idea and a strong desire for some form of authorised use system to be retained. Based on this feedback recreational mooring licensees will be able to nominate one vessel of suitable size as an authorised user of their mooring site. DoT may apply limitations on the period of authorised use in any one or consecutive licence periods.



Implementation

Following endorsement by the Minister for Transport of the recommendations of the Mooring Regulation Streamline Review outlined in the *Final Moorings Management Position Paper*, DoT's position in relation to each of the five objectives is clear. In accordance with the recommendations the Mooring Regulations 1998 will be amended and systematically introduced firstly into the existing proclaimed MCAs and secondly through the proclamation of new MCAs in locations identified by DoT.

DoT will notify all existing mooring licensees and consult with them throughout the implementation of the changes.

Acknowledgements

DoT would like to thank all members of the key stakeholder working group, members of the public who participated in the surveys and attended the workshops and KREAB consulting and KREAB research for their contributions to the review.

To view copies of the discussion paper, position paper, survey results and final moorings position paper visit: www.transport.wa.gov.au/marine/mooring-regulation-streamline-review.asp





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