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Performance Audit

Regulation of Great Barrier Reef Marine Park Permits and Approvals

Great Barrier Reef Marine Park Authority

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Canberra ACT
13 August 2015

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Great Barrier Reef Marine Park Authority titled *Regulation of Great Barrier Reef Marine Park Permits and Approvals*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, reading 'Grant Hehir', is positioned above the printed name.

Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

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Abbreviations

ANAO	Australian National Audit Office
CDPP	Commonwealth Director of Public Prosecutions
CMIS	Compliance Management Information System
EAP Section	Environmental Assessment and Protection Section
EMP	Environmental Management Plan
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
FMCU	Field Management Compliance Unit
GBRMP	Great Barrier Reef Marine Park
GBRMP Act	<i>Great Barrier Reef Marine Park Act 1975</i>
GBRMPA	Great Barrier Reef Marine Park Authority
GPS	Global Positioning System
Marine Park	Great Barrier Reef Marine Park
MSQ	Maritime Safety Queensland
QBFP	Queensland Boating and Fishing Patrol
QPWS	Queensland Parks and Wildlife Service
UNESCO	United Nations Educational, Scientific and Cultural Organization

Summary and Recommendations

Summary

Introduction

1. The Great Barrier Reef extends along the east coast of Queensland from Cape York to Bundaberg (approximately 2300 kilometres). In recognition of the environmental significance of the reef, the Australian Government enacted the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act¹) in 1975 that established the Great Barrier Reef Marine Park (Marine Park) in stages from 1980 to 2004. The Marine Park was established to provide for the long term protection and conservation of the environment, biodiversity and heritage values of approximately 344 000 square kilometres of the Great Barrier Reef region.² Subsequently, in 1981, the Great Barrier Reef was declared a World Heritage Area (with the declaration covering the Marine Park, Queensland's Great Barrier Reef Coast Marine Park³, all islands and 12 trading ports) on the basis of its outstanding universal value.

2. The reef comprises a broad range of biodiversity and heritage values, with the condition of these values determining the quality of the cultural, social and economic benefits that the community derives from the reef (such as aesthetics, income, appreciation and enjoyment).⁴ The 2014 Outlook Report prepared by the Great Barrier Reef Marine Park Authority⁵ indicated that the Great Barrier Reef 'is an icon under pressure'. The report concluded that 'even with the recent management initiatives to reduce threats and improve resilience, the overall outlook for the Great Barrier Reef is poor, has worsened since 2009 and is expected to further deteriorate in the future'.⁶ The relatively recent approvals granted by the Australian Government for commercial activity in and around the Marine Park and the United Nations Educational, Scientific and

1 The GBRMP Act established the borders of the Marine Park, which encompass the length of the reef and (with some exclusions) east from mean low tide to distances of between 60 and 260 kilometres offshore.

2 s2A(1) of the GBRMP Act.

3 Queensland's Great Barrier Reef Coast Marine Park extends from the coast's mean high tide to three nautical miles offshore, and thus overlaps the territory of the Marine Park.

4 GBRMPA, *Great Barrier Reef Region Strategic Assessment: Strategic Assessment Report*, August 2014, p. 5-3.

5 The Great Barrier Reef Marine Park Authority (GBRMPA) is a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*. The role of GBRMPA is discussed later in this section.

6 GBRMPA, *Outlook Report 2014*, August 2014, pp. v-vi.

Cultural Organization's (UNESCO's) review of the reef's World Heritage status have also focused greater attention on the reef's long-term sustainability.

3. Over recent years, the Australian and Queensland governments have established programs (such as the Reef Rescue program) and taken policy decisions (for example, in relation to port developments and dredge spoil dumping) to address the drivers and activities that have the potential to adversely impact on the reef. In response to UNESCO's review, the Australian and Queensland governments also issued the *Reef 2050 Long-Term Sustainability Plan* in March 2015 that provides an overarching strategy for the management of the Great Barrier Reef World Heritage Area through to 2050.

Marine Park regulatory framework

4. The regulatory framework applying to the Marine Park is established primarily under the GBRMP Act, which identifies the Marine Park's boundaries, prohibited activities, activities allowable with permission, fee charging arrangements and enforcement powers. Subsidiary legislative instruments include: the GBRMP Zoning Plan 2003; Plans of Management; and GBRMP Regulations 1983. The administration of the regulatory framework applying to the Marine Park is primarily the responsibility of the Great Barrier Reef Marine Park Authority.

Great Barrier Reef Marine Park Authority

5. The Great Barrier Reef Marine Park Authority (GBRMPA) was established in 1975 under the GBRMP Act to ensure the long-term protection, ecologically sustainable use, understanding and enjoyment of the Great Barrier Reef for all Australians and the international community through the care and development of the Marine Park.⁷ One means by which GBRMPA helps to manage the ecological sustainable use of the Marine Park is by granting permits for particular activities and monitoring/enforcing permit holders' compliance with permit conditions.⁸

7 Great Barrier Reef Marine Park Authority Budget Statements, *Portfolio Budget Statements 2015–16: Budget Related Paper No. 1.7 – Environment Portfolio*, p. 212.

8 For the purposes of this audit, the term 'permits' has been used to describe the permissions regime outlined in the GBRMP Regulations.

6. Incorporated bodies and individuals intending to undertake particular activities within the Marine Park are required to obtain permission from GBRMPA prior to their commencement, including for:

- most commercial activities, such as tourist programs;
- the installation and operation of structures, such as jetties, marinas, pontoons, and moorings;
- any significant works, such as dredging and spoil dumping; and
- educational and research programs.⁹

7. GBRMPA and the Queensland Parks and Wildlife Service (QPWS)¹⁰ operate a joint application and permit assessment process for most permit requests that cover both the Marine Park and Queensland's Great Barrier Reef Coast Marine Park. The permit application forms that are submitted by prospective permit holders are generally subjected to a desk-top assessment by GBRMPA's Environmental Assessment and Protection (EAP) Section, with input to be provided by QPWS, specialist GBRMPA staff and other third-parties, as required.

8. The approvals granted by GBRMPA (and QPWS where applicable) allow permit holders to undertake regulated activities in both the Commonwealth and state marine parks, subject to the conditions attached to approved permits. While permit approvals for new applicants are generally issued for one year, multi-year permits are available for incorporated bodies and individuals seeking the replacement of an expiring permit (for example, up to six years for most tourism operations). Permits have been granted for longer periods—up to 15 years—in the case of tourism operators recognised as high standard tourism operators and some facilities/works/structures.

9. Over the 10 years from 2004–05 to 2013–14, GBRMPA issued 4296 permits (excluding permit transfers) containing 6337 individual permissions.¹¹ As at August 2014, 1334 Marine Park permits containing 2408 individual permissions were current—85.8 per cent of which related to

9 Most visitors to the Marine Park do not require a permit for recreational activities.

10 QPWS is part of the Queensland Government Department of National Parks, Sport and Racing (NPSR).

11 Each permit may contain one or more individual permissions to undertake specified activities.

tourism operations (1488), operating a facility or mooring (311) and research activities (267).

10. The monitoring of permit holders' compliance with permit conditions is to be undertaken through a combination of:

- desk-based compliance monitoring and targeted site inspections by the EAP Section; and
- vessel, aerial and land-based patrols/surveillance by GBRMPA and its partner agencies under the Joint Field Management Program.¹²

11. Any allegations of, or incidents relating to, non-compliance with permit conditions may be subject to investigation by GBRMPA (primarily by its Field Management Compliance Unit¹³ or the EAP Section). Where non-compliance is established, GBRMPA may take enforcement action against non-compliant permit holders, which can include advisory letters, infringement notices, prosecution and the suspension/revocation of permits. In the period from July 2012 to June 2014, there were 76 reported breaches of GBRMP permit conditions, which resulted in 59 investigations— with the issuing of advisory letters (in 35 cases) being the most common enforcement response.

Audit objective and criteria

12. The objective of this audit was to assess the effectiveness of the Great Barrier Reef Marine Park Authority's regulation of permits and approvals within the Great Barrier Reef Marine Park.

13. To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- an effective process to assess permit applications and attach enforceable conditions has been established;

12 The Joint Field Management Program has been established by the Australian and Queensland governments to undertake conservation activities and monitor activity in the Great Barrier Reef World Heritage Area and land catchment. The Program comprises officers from GBRMPA and QPWS, supported by partner agencies, including Border Protection Command, Queensland Boating and Fishing Patrol and the Queensland Police Service.

13 The FMCU, funded under the Joint Field Management Program, comprises officers from GBRMPA and QPWS that coordinate and undertake investigation and enforcement activities in the Great Barrier Reef World Heritage Area.

- a structured risk management framework to assess and manage compliance risks has been implemented;
- an effective risk-based compliance program to communicate regulatory requirements and to monitor compliance with permit conditions and regulatory objectives has been implemented; and
- arrangements to manage non-compliance are effective.

14. The ANAO examined GBRMPA's assessment of Marine Park permit applications, monitoring of permit holders' compliance and response to permit holders' non-compliance.¹⁴ The ANAO did not examine GBRMPA's other regulatory activities, such as the FMCU's investigation and enforcement activities associated with: activities not subject to a permit; the state marine park; or permits and licenses granted under state legislation.

Overall conclusion

15. GBRMPA assesses approximately 400 permit applications each year and, at any one time, GBRMPA and its partner agencies under the Joint Field Management Program are responsible for monitoring the compliance of approximately 1300 permit holders with their permit conditions and taking appropriate enforcement action in response to identified non-compliance. Over the period July 2012 to June 2014, GBRMPA assessed 76 reported breaches of Marine Park permit conditions (approximately five per cent of all recorded breach incidents¹⁵) and conducted 59 investigations.

16. In relation to the regulation of permits, identified shortcomings in GBRMPA's regulatory processes and, more particularly, its regulatory practices have undermined the effectiveness of the permitting system as a means of managing risks to the Marine Park. These shortcomings were identified across a broad range of GBRMPA's regulatory activities, including its assessment of permit applications, monitoring of permit holder compliance and response to non-compliance.

14 The ANAO selected samples of GBRMP permit application assessments and current permits over the period from July 2012 to June 2014. The samples, which equated to 10 per cent of permit application assessments and current permits, were broadly selected in proportion with 12 key parameters of the respective populations. In addition, the ANAO examined all 'breach of permit' enforcement actions over the period from July 2012 to June 2014.

15 Most non-compliance incidents and investigations relate to breaches of state fishing permits and licences or for activities not subject to a permit.

17. While GBRMPA has well-established arrangements for processing and assessing permit applications, there were weaknesses in the quality and completeness of the assessments undertaken against regulatory requirements. The causes of these weaknesses included fragmented and incomplete guidance material for staff, incomplete records, insufficient consideration of relevant assessment requirements and limited assurance from quality control processes. As a consequence, the permit application assessment reports prepared for the delegate did not address all regulatory requirements on which decisions to issue or refuse permits were to be based. Delegates did, however, generally document their decisions to issue or refuse permits in an appropriate manner, including the reasons underpinning the decisions, after considering the permit application assessment reports and proposed conditions to be attached to issued permits. These conditions, which are the primary means by which GBRMPA mitigates the risks posed to the reef by proposed activities, generally addressed many of the high or medium-rated risks identified during the assessment process. GBRMPA should, however, periodically review the design of standard permit conditions that it applies to common permit types to help ensure that they effectively address significant risks to the Marine Park.

18. In general, permit monitoring undertaken collectively by GBRMPA and its partner agencies has been insufficient to determine permit holders' compliance with permit conditions. Specifically, GBRMPA was not effectively monitoring the timely receipt of most post-approval reporting documentation that permit holders were required to submit under their permit conditions, nor appropriately documenting its assessment/approval of the post-approval reports submitted. While intelligence and risk-based field compliance operations (primarily vessel, aerial and land-based patrols) undertaken by GBRMPA and its partners agencies are effective in detecting some forms of permit-related non-compliance, they are not well-suited to detecting other forms of non-compliance (such as the condition of sub-surface infrastructure). The limited additional monitoring of permit compliance that has been undertaken by GBRMPA to supplement existing patrols (including site inspections), was not, however, informed by an appropriate risk-based approach. The failure to effectively monitor permit holder reporting requirements and to undertake sufficient risk-based supplementary monitoring activities reduces the effectiveness of permit conditions as a means of managing risks to the Marine Park from permitted activities.

19. Until recently, many instances of permit holder non-compliance (mostly related to the provision of required documentation) were not identified by

GBRMPA staff and not recorded centrally for assessment and possible enforcement action.¹⁶ These shortcomings in recording permit non-compliance have adversely impacted on GBRMPA's ability to develop an informed view of the extent of permit non-compliance and address areas of non-compliance in a timely manner. The limited guidance for investigators when determining appropriate enforcement responses to non-compliance, when coupled with poorly documented reasons for enforcement actions, also makes it difficult for GBRMPA to demonstrate the basis for its enforcement decision-making.

20. GBRMPA has acknowledged weaknesses in its permit assessment and compliance management processes and practices and has commenced work on a number of initiatives to strengthen existing arrangements. As part of this work, a high-level risk assessment of permitted activities in the Marine Park, which was prepared by GBRMPA in late 2014, indicated that existing controls (primarily permit conditions, deeds and bonds, intelligence gathering and analysis, patrols, and other monitoring activities) are generally insufficient to detect non-compliance with permit conditions. GBRMPA informed the ANAO that the permit compliance management plan, currently under development, will outline strategies to better address risks to the Marine Park environment from permitted activities and permit holders.

21. To improve GBRMPA's regulation of Marine Park permits and to inform the work being undertaken to enhance compliance management practices, the ANAO has made five recommendations to strengthen the: processing of permit applications; rigour of the permit application assessment and decision-making processes; effectiveness of permit conditions; effectiveness of permit compliance monitoring; and response to instances of non-compliance.

Key findings by chapter

Processing of Permit Applications (Chapter 2)

22. While GBRMPA has produced a range of guidance materials to underpin its processing of permit applications, the materials are fragmented and unclear in parts and do not clearly address all relevant requirements.

16 GBRMPA informed the ANAO that it established and implemented new processes for 2014–15 to monitor the receipt of post-approval reporting documentation from permit holders and to record potential non-compliance with post-approval reporting requirements.

GBRMPA should revise and finalise its application processing guidance materials—much of which is currently in draft form or overdue for a review.

23. The arrangements established by GBRMPA to process permit applications are generally sound, but the extent to which the requirements have been implemented has been variable. Permit processing activities (such as the receipt and acknowledgement of permit applications and issuing native title notifications) were generally undertaken satisfactorily¹⁷, but other required permit processing activities (including responses to native title notifications, and referrals within GBRMPA and/or to QPWS for comment) were not.¹⁸

24. GBRMPA officers are to complete checksheets for each permit application assessment as a means of monitoring the satisfactory conduct of processing activities. However, over half of the assessment checksheets (56 per cent) examined by the ANAO were incomplete. Notwithstanding the incomplete status of most checksheets, permit processing activities had been certified as complete by the EAP Section. The certification of incomplete checksheets reduces the assurance that they are intended to provide.

Permit Application Assessment (Chapter 3)

25. The GBRMP Regulations specify a number of mandatory and discretionary considerations as part of the permit application assessment process. GBRMPA has developed, and relies heavily upon, templates to assess routine permit applications¹⁹ against relevant regulatory requirements. While the template-based assessments took into account many requirements, they were, in general, not sufficiently tailored to address all applicable requirements—particularly discretionary considerations. Similarly, the

17 For example, of the 76 permit applications examined by the ANAO, GBRMPA: acknowledged the receipt of permit applications within two weeks for 93.7 per cent of applications; and issued native title notifications as required for 96.2 per cent of applications.

18 For example, of the 76 permit applications examined by the ANAO, GBRMPA did not retain documentation to evidence: eight of the 25 responses (32 per cent) received from native title notifications; the referral of applications within GBRMPA for 26 of the 40 applications (65 per cent) that met referral thresholds; and the referral of applications to QPWS for 12 of the 70 applications (17.1 per cent) that met referral thresholds.

19 Routine permit applications cover the most common permission types (including vessel and aircraft-based tourism, research and moorings) that GBRMPA has assessed as generally posing a lower risk to the Marine Park environment relative to other (non-routine) applications—most commonly major facilities/works/structures—that pose a greater risk. Routine permit applications comprise in excess of 90 per cent of all permit applications.

customised assessments prepared for non-routine applications also took into account most, but not all, mandatory and discretionary regulatory requirements (such as the condition of some existing structures current at the time of permit assessment).

26. Risk assessments (also template-based) are to be prepared as part of permit application assessments. However, 48 per cent of risk assessments in the sample of permits examined by the ANAO did not consider all relevant risks posed by the permitted activities, including the potential for damage to/interference with coral and marine life, and the impact on other Marine Park users. Further, risk assessments have not been prepared for approximately 8.5 per cent of permit assessments (involving activities such as moorings) undertaken by GBRMPA over the period from July 2012 to June 2014. Weaknesses in the identification of risks to the Marine Park posed by proposed activities makes it more difficult for GBRMPA to design appropriate conditions to attach to permits.

27. As a consequence of the weaknesses in permit processing and assessment activities, the assessment reports prepared for delegates did not incorporate all relevant information to inform the delegate's decision to issue or refuse a permit. In addition, the assessment of permit applications by GBRMPA has not been timely. Over the period from July 2012 to June 2014, GBRMPA achieved its 60-day target timeframe for assessing routine applications in 57 per cent of cases (413 of the 720 routine applications), with a further 81 applications taking between 120 days and around two years to complete. Over the same period, assessments of 22 of the 63 non-routine applications (for which no target assessment timeframes have been established) took between one year and nearly four years to complete. The comments provided to the ANAO by permit holders and general stakeholders identified assessment timeliness as an area of concern in relation to GBRMPA's regulation of permits.

Permit Decisions and Approval Conditions (Chapter 4)

28. The 786 permit assessment decisions during the period July 2012 to June 2014 were made by an authorised GBRMPA delegate. In 78 of the 79 permit assessments examined by the ANAO, the assessment reports contained recommendations that were supported by the assessments prepared, with the delegate agreeing to all recommendations (76 of which were to grant a permit and two to refuse a permit). The remaining permit application assessment report

for a high-risk activity in the Marine Park (to dump capital dredge spoil off the coast of Abbot Point), contained four options (to refuse to grant a permit or grant a permit under three separate scenarios) with no recommendation from the assessment officer. The nature of this approval decision, including the high risk to the Marine Park and the absence of a recommendation to the delegate, increased the importance of the delegate thoroughly documenting the reasons for the decision at the time that it was made.²⁰

29. To inform its identification of the relevant conditions to attach to Marine Park permits, GBRMPA has established a suite of templates for most permit types that can be tailored to meet the requirements of each permit. While most permit conditions have been satisfactorily designed to address many of the identified high and medium-rated risks to the Marine Park environment, some conditions do not sufficiently address identified risks (for example, the risk of vessels anchoring without moorings damaging coral). To help ensure that significant risks are being effectively mitigated, GBRMPA should periodically review the design of standard permit conditions.

Compliance Intelligence and Risk Assessment (Chapter 5)

30. The FMCU has established processes for collecting and analysing compliance intelligence to inform the identification, assessment and treatment of a broad range of compliance risks that have the potential to impact on the health of the Marine Park. Given its contact with a large number of permit applicants each year and its compliance monitoring and permit maintenance activities for over 1300 current permit holders, there is scope for GBRMPA's EAP Section to make a greater compliance intelligence contribution to the FMCU's intelligence collection activities and products. Recent improvement in the coordination of the FMCU's and EAP Section's compliance activities has the potential to enhance permit-related intelligence and overall permit compliance management outcomes.

31. To further improve its monitoring and management of compliance risks associated with permits and permitted activities, GBRMPA's EAP Section is developing a permit compliance management plan. As part of this work, a

20 In this case, a more comprehensive explanation of the basis on which the delegate approved the permit was subsequently provided one and a half months later when GBRMPA prepared and published a statement of reasons in response to a number of requests for such a statement received after the decision was made.

high-level risk assessment of permitted activities in the Marine Park, which was prepared by GBRMPA in 2014, indicated that existing controls (primarily permit conditions, deeds and bonds, intelligence gathering and analysis, patrols, and other monitoring activities) are generally insufficient to detect non-compliance with permit conditions. The permit compliance management plan, to be introduced in 2015–16, is expected to rate the potential risks to the Marine Park environment from permitted activities, taking into account the risks of non-compliance, and identify a range of additional treatments to mitigate unacceptable risks.

Managing Compliance (Chapter 6)

32. GBRMPA's monitoring of permit holders' compliance with post-approval reporting requirements established for issued permits has been mixed. While GBRMPA effectively monitors the execution/lodgement of deeds and bonds²¹, it has not generally monitored the receipt, nor effectively documented its assessment/approval of, most other post-approval reporting documentation that permit holders are required to submit. For example, GBRMPA retained evidence of the receipt of 18 of 63 required documents (relating to 27 permits), with evidence of assessment/approval retained in relation to only eight documents.

33. A risk-based supplementary monitoring program is also an important component of effective permit compliance arrangements, as patrols under the Joint Field Management Program are not well-suited to observe compliance or detect non-compliance with some permit conditions or for some permit types, including the condition of sub-surface infrastructure (such as jetties, pontoons and pipelines). The conduct of supplementary monitoring has, however, been limited and not underpinned by an appropriate risk-based approach. While GBRMPA effectively monitors the commencement of permitted tourism operations and the impending expiry of permits²², it did not initiate or conduct monitoring activities, on a risk basis, for 104 permits (89.7 per cent) examined

21 GBRMPA executed 40 of 42 deeds and oversaw the submission of all 15 bonds related to the permits examined by the ANAO.

22 GBRMPA examines its other data holdings to determine whether tourism permit holders commenced operations within the established timeframe (usually two years unless an extension is granted). In advance of the expiry of permits, GBRMPA issues reminders to permit holders to submit another permit application if they wish to continue to conduct the permitted activities.

by the ANAO over the period from July 2012 to July 2014.²³ Further, there were shortcomings in GBRMPA's delivery and documentation of some of the activities that were undertaken.

34. Overall, permit monitoring undertaken by GBRMPA has been insufficient to determine permit holders' compliance with permit conditions. Improved monitoring of permit holders' compliance with post-approval reporting requirements and the establishment of a risk-based program of supplementary monitoring would better position GBRMPA to manage the risks posed to the Marine Park by permitted activities.

Responding to Non-compliance (Chapter 7)

35. While GBRMPA is working to develop revised compliance policy, strategy and guidance documentation, the material developed to date is generally in draft form and does not address all fundamental regulatory requirements. GBRMPA should improve compliance and enforcement guidance materials to better assist staff to effectively respond to non-compliance in a consistent and timely manner.

36. The EAP Section is well-positioned to identify non-compliance with permit conditions, particularly in relation to post-approval reporting requirements. However, many instances of non-compliance that were evident from permit monitoring activities undertaken by the EAP Section were not reported to the FMCU and, as a result, were not recorded in the Compliance Management Information System (CMIS) to enable analysis and assessment for potential enforcement action.²⁴ The implementation of new processes for 2014–15 to record potential permit holder non-compliance with post-approval reporting requirements will better position GBRMPA to take timely and appropriate enforcement action.

37. GBRMPA's CMIS database indicates that 59 of the 76 permit-related non-compliance incidents identified over the period July 2012 to June 2014 were investigated. However, the reasons for deciding whether to investigate

23 The supplementary monitoring undertaken was limited to nine of the 27 facility/works/structure and mooring permits and two of the 70 tourism-related permits in relation to ecotourism certification considerations.

24 Of the 81 instances of non-compliance detected by the ANAO over the period from July 2012 to September 2014 from an examination of GBRMPA records (relating to 32 of the 185 permits examined), only 18 instances (22.2 per cent) relating to one permit had been recorded as non-compliance incidents in CMIS.

these incidents were generally not documented (in 89.5 per cent of cases) and the prioritisation of, and planning for, investigations was not undertaken in accordance with established procedures. Further, while half of the 51 finalised investigations were completed within a relatively short time period (10 days or less), extended timeframes were required to finalise a significant proportion of investigations—many of which have been impacted by consistent, lengthy delays (of months, and even years) in obtaining timely information or action from other areas of GBRMPA (outside of the FMCU).

38. In general, the documentation of enforcement decision-making in relation to permit-rated non-compliance has been poor. In relation to the 51 finalised investigations:

- the officer making the enforcement decision and the date when the decision was made was unclear in 21 cases (41 per cent) and 18 cases (35 per cent), respectively; and
- the FMCU retained documentation to sufficiently explain the reasons underpinning the enforcement decision in only seven cases, with partially complete documentation retained for a further 14 cases.²⁵

39. While enforcement actions have generally been executed as intended by GBRMPA and the FMCU (with advisory letters the most common action taken), there were a small number of cases (related to the education of permit holders) where the investigations were closed despite enforcement action not having been undertaken. GBRMPA should better document the reasons for key decisions taken during investigations and verify that enforcement action has been undertaken prior to the closure of investigations.

Summary of entity response

40. GBRMPA's summary response to the proposed report is provided below, while the full response is provided at Appendix 1.

The Great Barrier Reef Marine Park Authority (the Authority) agrees without qualifications with all five recommendations contained within the report. The Authority had already identified the need to strengthen its permissions system through commitments in the *Great Barrier Reef Region Strategic Assessment*

25 The type of enforcement action (such as advisory letter or prosecution) had little or no bearing on the extent to which reasons were documented.

Program Report and commenced 'strengthening permissions system' activities as part of its 2014-15 work program. The recommendations from the ANAO report will be incorporated into this work as part of the Authority's *Corporate Plan 2015–2020*.

Over the next four years the Authority will stage the implementation of initiatives designed to enhance and strengthen the permissions system while maintaining high environmental standards to address the recommendations of the report. As part of its strengthening permissions system work program, the Authority has already instigated the following actions:

- Assessment and Decisions Enhancement Project
- Strengthening Permissions Compliance Action Plan 2015-2020
- Annual Permissions Compliance Plan
- Ongoing engagement with the Authority's Tourism Reef Advisory Committee

Actions undertaken during 2014-15 to improve the permissions system included reviewing policies, drafting guidelines and updating risk assessments. A Decision Making Training Module was delivered to all staff involved with the assessment of permit applications. Changes have already been implemented to ensure all alleged non-compliance is recorded and managed through the Compliance Management Information System and a training program on the permissions system and regulatory requirements has been developed and is being delivered throughout the agency and to partner agencies.

These initiatives will pave the way for an approach towards managing sustainable use of the Marine Park, through the delivery of an enhanced permissions assessment and decision system, the implementation of a compliance program based on risk and improvements to systems used to manage business processes associated with the permissions system.

Recommendations

Recommendation No. 1
Paragraph 2.31 To improve the processing of Marine Park permit applications, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) review and finalise standard operating procedures and administrative guidance for the permit application and assessment process; and
- (b) reinforce to staff the need to document whether permit application assessment requirements have been addressed.

GBRMPA's response: *Agreed*

Recommendation No. 2
Paragraph 3.37 To improve the rigour of permit application assessment and decision-making processes, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) prepare and revise permit application and risk assessment templates to better address assessment considerations and risks relevant to the various permit types; and
- (b) reinforce to staff the importance of preparing assessment reports for delegates that adequately address regulatory assessment requirements.

GBRMPA's response: *Agreed*

Recommendation No. 3
Paragraph 4.28 To improve the effectiveness of permit conditions used to manage risks to the Marine Park from permitted activities, the ANAO recommends that the Great Barrier Reef Marine Park Authority periodically review the adequacy of standard permit conditions.

GBRMPA's response: *Agreed*

**Recommendation
No. 4
Paragraph 6.36**

To improve the effectiveness of permit compliance monitoring, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) develop and enhance standard operating procedures for undertaking compliance monitoring activities (including in relation to post-approval reporting requirements); and
- (b) implement a coordinated, risk-based program of compliance monitoring activities.

GBRMPA's response: *Agreed*

**Recommendation
No. 5
Paragraph 7.41**

To improve processes for responding to instances of permit non-compliance, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) update and finalise guidance documentation for managing non-compliance;
- (b) reinforce to staff the need for all instances of non-compliance by permit holders to be reported and recorded in the Compliance Management Information System;
- (c) document the reasons for key decisions taken during permit investigations, including whether to investigate incidents and enforcement decisions; and
- (d) verify that enforcement action has been undertaken prior to the closure of investigations.

GBRMPA's response: *Agreed*

Audit Findings

1. Background and Context

This chapter provides background information on the Great Barrier Reef Marine Park Authority, its regulatory framework and its approach to permit assessment, compliance monitoring and enforcement activities. It also sets out the audit objective and approach.

Introduction

1.1 The Great Barrier Reef extends along the east coast of Queensland from Cape York to Bundaberg (approximately 2300 kilometres). In recognition of the environmental significance of the reef, the Australian Government enacted the *Great Barrier Reef Marine Park Act 1975* (GBRMP Act²⁶) in 1975 that established the Great Barrier Reef Marine Park (Marine Park) in stages from 1980 to 2004. The Marine Park was established to provide for the long term protection and conservation of the environment, biodiversity and heritage values of approximately 344 000 square kilometres of the Great Barrier Reef Region (see Figure 1.1 on the following page).²⁷ Subsequently, in 1981, the Great Barrier Reef was declared a World Heritage Area (with the declaration covering the Marine Park, Queensland's Great Barrier Reef Coast Marine Park²⁸, all islands and 12 trading ports) on the basis of its natural outstanding universal value.

26 The GBRMP Act established the borders of the Marine Park, which encompass the length of the reef and (with some exclusions) east from mean low tide to distances of between 60 and 260 kilometres offshore.

27 s2A(1) of the GBRMP Act.

28 Queensland's Great Barrier Reef Coast Marine Park extends from the coast's mean high tide to three nautical miles offshore, and thus overlaps the territory of the Marine Park.

Figure 1.1: Great Barrier Reef Marine Park



Source: GBRMPA.

1.2 The reef comprises a broad range of biodiversity and heritage values, with the condition of these values determining the quality of the cultural, social and economic benefits that the community derives from the reef (such as aesthetics, income, appreciation and enjoyment).²⁹ Recent reef assessments and reports have noted that a number of key threats within and outside of the Marine Park are diminishing or are likely to diminish the condition of the reef's values (particularly in 'higher use' areas nearer urban populations). The *Great Barrier Reef Outlook Report 2014* outlined the following drivers and impacts:

- climate change—an increased concentration of greenhouse gases has the potential to increase sea temperatures, ocean acidification, sea level, ocean currents, tropical storm intensity and weather variability—all of which can negatively impact reef coral, sea grasses and marine animals;
- poor water quality from land-based run-off—inshore areas along the developed coast are impacted by elevated concentrations of suspended sediments, excess nutrients and pesticides, which (among other things) contribute to outbreaks of coral-depleting crown-of-thorns starfish;
- impacts from coastal development—coastal habitats (including freshwater wetlands, floodplains and saltmarshes) that are vital to the health of the reef are likely to continue to be impacted by coastal developments; and
- some remaining impacts of fishing—despite fishery management improvements, recreational fishing and the cumulative impacts of fishing and on fishing ecosystems remain poorly understood.³⁰

1.3 Over recent years, the Australian and Queensland governments have established programs (such as the Reef Rescue program) and taken policy decisions (for example, in relation to port developments and dredge spoil dumping) to address the drivers and activities that have the potential to adversely impact on the reef.

29 GBRMPA, *Great Barrier Reef Region Strategic Assessment: Strategic Assessment Report*, August 2014, p. 5-3.

30 GBRMPA, *Great Barrier Reef Outlook Report 2014*, August 2014, pp.v-vi.

Marine Park regulatory framework

1.4 The regulatory framework applying to the Marine Park is established primarily by the GBRMP Act and subsidiary legislative instruments, including the GBRMP Zoning Plan, Plans of Management and GBRMP Regulations.³¹ The GBRMP Act identifies the Marine Park's boundaries, prohibited activities, activities allowable with permission, fee charging arrangements and enforcement powers.

1.5 The Great Barrier Reef Marine Park Zoning Plan 2003 established defined areas of the Marine Park that are assigned to one of a number of zones—each with its own objectives and allowed uses with or without a permit.³² The areas designated as 'General Use' zones have the broadest allowable uses (many of which do not require a permit), while the areas designated as 'Preservation' zones have some of the greatest restrictions. The Zoning Plan also establishes designated areas for shipping and special management.

1.6 Plans of Management have been established (under Part VB of the GBRMP Act) for particular areas within the Marine Park. These plans set out management arrangements in addition to (but not inconsistent with) other regulatory requirements (such as in the Zoning Plan) to address particular environmental risks (high-use tourist areas or to specific marine species). There are currently four plans of management for areas around Cairns, Hinchinbrook, Shoalwater Bay and the Whitsunday Islands.

1.7 The Great Barrier Reef Marine Park Regulations 1983 establish administrative arrangements for matters covered by the GBRMP Act, such as fees and charges for permits and park usage/visitors, and the management of permits—application, consideration, granting/refusing, transfer and modification/suspension/revocation.

1.8 The administration of the regulatory framework applying to the Marine Park is primarily the responsibility of the Great Barrier Reef Marine Park Authority.

31 Other Commonwealth and state environmental legislation also applies within the Marine Park, including: the assessment and approval provisions and Commonwealth marine provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth); Queensland fisheries legislation; the *Sustainable Planning Act 2009* (Qld) and *Coastal Protection and Management Act 1995* (Qld).

32 For the purposes of this audit, the term 'permits' has been used to describe the permissions regime outlined in the GBRMP Regulations.

Great Barrier Reef Marine Park Authority

1.9 The Great Barrier Reef Marine Park Authority (GBRMPA) was established in 1975 under the GBRMP Act to ensure the long-term protection, ecologically sustainable use, understanding and enjoyment of the Great Barrier Reef for all Australians and the international community through the care and development of the Marine Park.³³ GBRMPA's three primary objectives (and associated activities) for 2015–16 are to:

- protect and restore the Reef's ecosystem health and biodiversity—through the production and implementation of management plans/reports (such as for water quality, climate change action, biodiversity conservation, and reef outlook) and undertaking conservation and pest reduction activities;
- safeguard the Reef's heritage—through fulfilling the heritage requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and undertaking cultural heritage protection activities; and
- ensure use of the Marine Park is ecologically sustainable and benefits current and future generations—including management of the Marine Park's use for fishing, recreation, tourism and research.³⁴

1.10 One means by which GBRMPA helps to manage the ecological sustainable use of the Marine Park is by granting permits for particular activities and monitoring/enforcing permit holders' compliance with permit conditions.

Regulation of permits

1.11 Incorporated bodies and individuals intending to undertake particular activities within the Marine Park are required to obtain permission from GBRMPA prior to their commencement, including for:

- most commercial activities, such as tourist programs;
- the installation and operation of structures, such as jetties, marinas, pontoons, and moorings;

33 Hunt, G., Great Barrier Reef Marine Park Authority Budget Statements, *Portfolio Budget Statements 2015–16: Budget Related Paper No. 1.7 – Environment Portfolio*, p. 212.

34 GBRMPA's objectives have not changed markedly over recent years.

- any significant works, such as dredging and spoil dumping; and
- educational and research programs.³⁵

1.12 GBRMPA and the Queensland Parks and Wildlife Service (QPWS)³⁶ operate a joint application and permit assessment process for most permit requests that cover both the Marine Park and Queensland’s Great Barrier Reef Coast Marine Park. The permit application forms that are submitted by prospective permit holders are generally subjected to a desk-top assessment by GBRMPA’s Environmental Assessment and Protection (EAP) Section, with input to be provided by QPWS, specialist GBRMPA staff and other third-parties, as required.

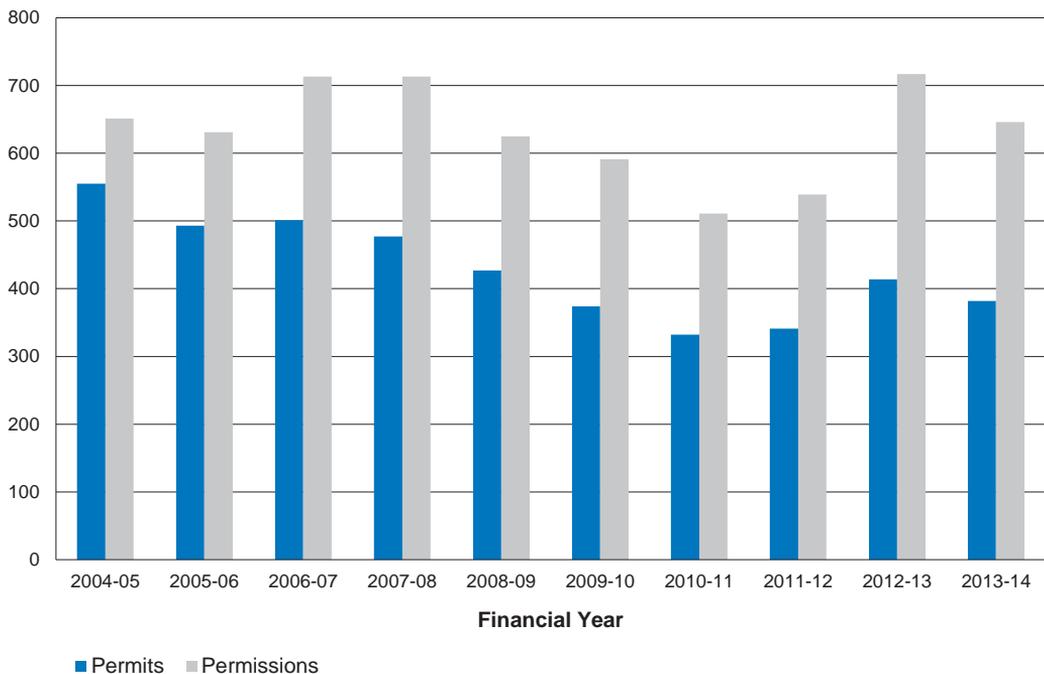
1.13 The approvals granted by GBRMPA, and QPWS (where applicable), allow permit holders to undertake regulated activities in both the Commonwealth and state Marine Parks, subject to the conditions attached to approved permits. While permit approvals for new applicants are generally issued for one year, multi-year permits are available for incorporated bodies and individuals seeking the replacement of an expiring permit (for example, up to six years for most tourism operations). Permits have been granted for longer periods—up to 15 years—in the case of tourism operators recognised as high standard tourism operators³⁷ and some facilities/works/structures.

1.14 Over the 10 years from 2004–05 to 2013–14, GBRMPA issued 4296 permits (excluding permit transfers) containing 6337 individual permissions (see Figure 1.2).

35 Most visitors to the Marine Park do not require a permit for recreational activities.

36 QPWS is part of the Queensland Government Department of National Parks, Sport and Racing.

37 GBRMPA recognises tourism operators as high standard operators when they are independently certified. Ecotourism Australia’s ECO Certification Program is a recognised independent certification scheme.

Figure 1.2: Permits and permissions granted by GBRMPA

Source: ANAO analysis of GBRMPA information.

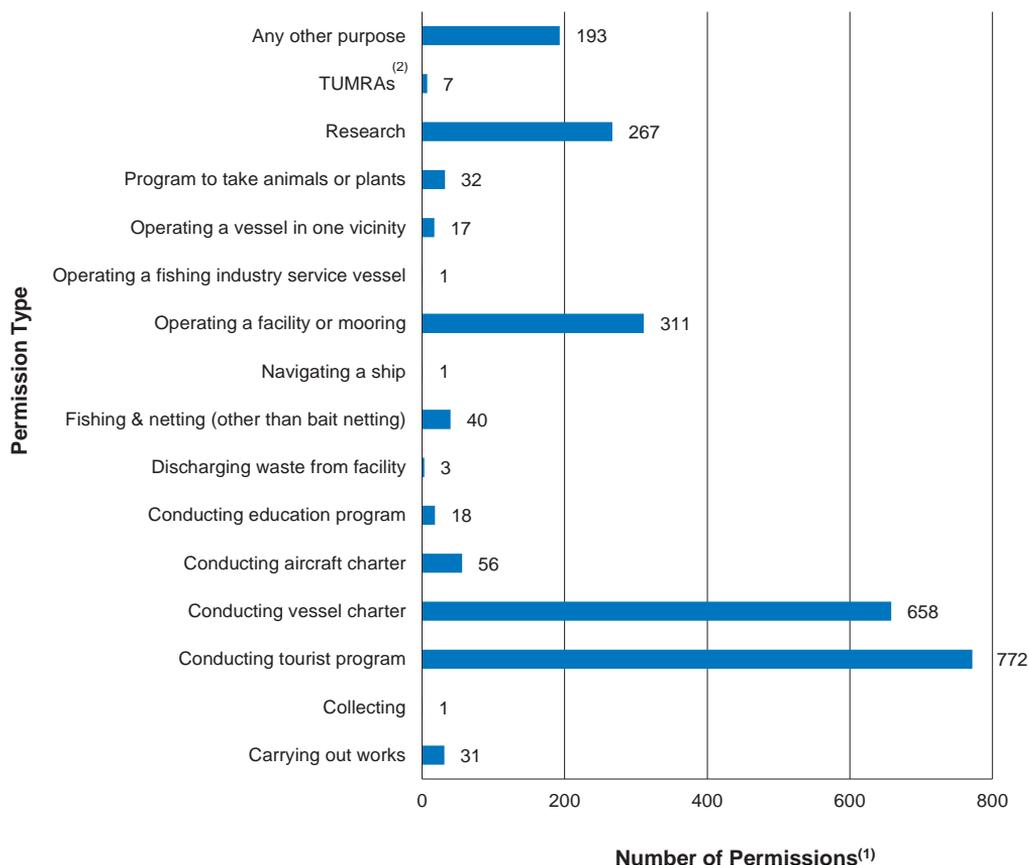
1.15 As at August 2014, 1334 Marine Park permits containing 2408 individual permissions were current (as illustrated in Figure 1.3 on the following page)—85.8 per cent of which related to tourism operations (1488), operating a facility or mooring (311) and research activities (267).

1.16 The monitoring of permit holders' compliance with permit conditions is to be undertaken through a combination of:

- desk-based compliance monitoring and targeted inspections by the EAP Section; and
- vessel, aerial and land-based patrols/surveillance by GBRMPA and its partner agencies under the Joint Field Management Program.³⁸

38 The Joint Field Management Program has been established by the Australian and Queensland governments to undertake conservation activities and monitor activity in the Great Barrier Reef World Heritage Area and land catchment. The program comprises officers from GBRMPA and QPWS, supported by partner agencies, including Border Protection Command, Queensland Boating and Fishing Patrol and the Queensland Police Service.

Figure 1.3: GBRMPA permissions (as at August 2014)



Source: ANAO analysis of GBRMPA information.

Note 1: The 2408 permissions are contained in 1334 permits. Current permits include those where GBRMPA is yet to finalise the assessment of the permit holders' application for a continuation of an expired permit.

Note 2: TUMRA—Traditional Use of Marine Resources Agreement.

1.17 Any allegations of, or incidents relating to, non-compliance with permit conditions may be subject to investigation by GBRMPA (primarily by its Field Management Compliance Unit³⁹ or the EAP Section). Where non-compliance is established, GBRMPA may take enforcement action against non-compliant permit holders, which can include advisory letters, infringement notices,

39 The FMCU, funded under the Joint Field Management Program, comprises officers from GBRMPA and QPWS that coordinate and undertake investigation and enforcement activities in the Great Barrier Reef World Heritage Area.

prosecution and the suspension/revocation of permits. In the period from July 2012 to June 2014, there were 76 reported breaches of GBRMP permit conditions, which resulted in 59 investigations—with the issuing of advisory letters (in 35 cases) being the most common enforcement response.

Recent reviews and major reports

1.18 In August 2014, GBRMPA finalised and released its *Great Barrier Reef Outlook Report 2014* and a *Strategic Assessment of the Great Barrier Reef Region* (with the Queensland Government undertaking a parallel and complementary *Strategic Assessment of the Great Barrier Reef Coastal Zone*). The Outlook Report, produced every five years, confirmed that the Great Barrier Reef ‘is an icon under pressure’ with the major threats being ‘climate change, poor water quality from land-based run-off, impacts from coastal development and some remaining impacts of fishing’. The Outlook Report concluded that ‘even with the recent management initiatives to reduce threats and improve resilience, the overall outlook for the Great Barrier Reef is poor, has worsened since 2009 and is expected to further deteriorate in the future’.⁴⁰

1.19 The findings of the strategic assessment have informed a separate *Program Report for the Great Barrier Reef Region* that detailed, among other things, GBRMPA’s future commitments to protect and manage matters of national environmental significance (under the EPBC Act), including the outstanding universal value of the Great Barrier Reef World Heritage Area. The Program Report assessed GBRMPA’s permit system and made a number of specific commitments to progressively strengthen (and, from time-to-time, amend) its policies, guidance material and support tools for assessing and determining permits.

1.20 In March 2015, the Australian and Queensland governments issued the *Reef 2050 Long-Term Sustainability Plan* that provides an overarching strategy for the management of the Great Barrier Reef World Heritage Area. The Plan sets out broad outcomes for the World Heritage Area through to 2050 and specific actions to deliver targets for the five years to 2020.

40 GBRMPA, *Outlook Report 2014*, August 2014, pp. v-vi.

Parliamentary and media coverage

1.21 The condition of the Great Barrier Reef has been of ongoing Parliamentary and media interest for an extended period of time. Three relatively recent events have focused greater attention on the reef's long-term sustainability:

- approvals granted by the Department of the Environment to construct three liquefied natural gas processing plants at Curtis Island (near Gladstone);
- a review of the reef's status as a World Heritage Area by the World Heritage Committee of United Nations Educational, Scientific and Cultural Organization (UNESCO)⁴¹; and
- approval granted by the Department of the Environment and GBRMPA to allow capital dredging at the Abbot Point coal terminal and the dumping of dredge spoil in the Marine Park (subject to conditions).⁴²

1.22 In September 2014, the Senate Environment and Communications References Committee also completed its report on the *Management of the Great Barrier Reef*. The report endorsed the findings of the 2014 Outlook Report and made 29 recommendations to improve the management of the Great Barrier Reef. The recommendations relevant to GBRMPA include the development of the *Reef 2050 Long-Term Sustainability Plan*, the maintenance of GBRMPA funding and staffing, and the collation of relevant reef reports and publications. As at June 2015, the Australian Government had yet to formally respond to the Senate Committee's recommendations.

ANAO coverage

1.23 The ANAO first undertook a performance audit in GBRMPA in 1997, with ANAO Report No.33 *Commonwealth Management of the Great Barrier Reef* tabled in February 1998. The audit had a broad objective—to assess the efficiency and effectiveness of the Australian Government's management of the Great Barrier

41 In April 2014, UNESCO's World Heritage Committee committed to examine the status of the reef at its June/July 2015 meeting 'with a view to considering ... the possible inscription of the property on the List of World Heritage in Danger'. The Committee agreed at its June/July 2015 meeting that the Australian Government report to the Committee on progress with the implementation of the *Reef 2050 Long-Term Sustainability Plan* by 1 December 2016 (thus avoiding an 'in danger' listing).

42 The Australian Government has recently introduced retrospective legislation into Parliament that, if passed, would ban all current and future capital dredge spoil disposal in the Marine Park.

Reef as implemented by GBRMPA. The ANAO made seven recommendations to enhance the effectiveness of governance arrangements including, in particular, the efficient and effective achievement of its stated objectives. A follow-up performance audit, ANAO Report No.8 *Commonwealth Management of the Great Barrier Reef Follow-up Audit* in 2003–04, determined that GBRMPA had implemented six of the seven recommendations, with the remaining partially implemented recommendation expected to be fully implemented in the near future.

Audit objective, criteria and methodology

1.24 The objective of this audit was to assess the effectiveness of the Great Barrier Reef Marine Park Authority's regulation of permits and approvals within the Great Barrier Reef Marine Park.

1.25 To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- an effective process to assess permit applications and attach enforceable conditions has been established;
- a structured risk management framework to assess and manage compliance risks has been implemented;
- an effective risk-based compliance program to communicate regulatory requirements and to monitor compliance with permit conditions and regulatory objectives has been implemented; and
- arrangements to manage non-compliance are effective.

1.26 In undertaking the audit, the ANAO reviewed GBRMPA's files and records, including those related to sampled permit application assessments, monitoring activities and enforcement actions.⁴³ The ANAO accompanied departmental staff on compliance monitoring activities and assessed the controls for the two IT systems that support GBRMPA's assessment, monitoring and enforcement activities. Staff from GBRMPA, and staff of QPWS assigned to the Joint Field Management Program, were also interviewed. In addition, the views

⁴³ The ANAO examined samples of GBRMP permit application assessments and the monitoring of current permits over the period July 2012 to June 2014. The samples, which equated to 10 per cent of the populations of permit application assessments and current permits, were broadly selected in proportion with 12 key parameters of their respective populations. In addition, the ANAO examined all 'breach of permit' enforcement actions over the period July 2012 to June 2014.

of relevant stakeholders were sought on GBRMPA’s regulation of Marine Park’s permits and approvals.⁴⁴

1.27 The ANAO did not examine GBRMPA’s other regulatory activities, such as the FMCU’s investigation and enforcement activities associated with: activities not subject to a permit; the state marine park; or permits and licenses granted under state legislation.

1.28 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of \$643 000.

Report structure

1.29 The structure of the report is outlined in Table 1.1.

Table 1.1: Structure of the report

Chapter	Overview
2. Processing of Permit Applications	Examines the processing of Marine Park permit applications received by the Great Barrier Reef Marine Park Authority.
3. Permit Application Assessment	Examines the Great Barrier Reef Marine Park Authority’s preparation of permit application assessment reports for the delegate’s consideration.
4. Permit Decisions and Approval Conditions	Examines the delegate’s consideration of permit application assessment reports, the conditions attached to issued permits and follow-up of post-approval requirements.
5. Compliance Intelligence and Risk Assessment	Examines the compliance intelligence capability and risk assessment processes employed by the Great Barrier Reef Marine Park Authority to assess permit holders’ compliance with conditions attached to permits.
6. Managing Compliance	Examines the Great Barrier Reef Marine Park Authority’s management of permit holders’ compliance with permit conditions.
7. Responding to Non-compliance	Examines the arrangements established by the Great Barrier Marine Park Authority to respond to non-compliance with permit conditions, including the framework and systems underpinning enforcement.

44 The ANAO contacted permit holders and other stakeholders of the Great Barrier Reef Marine Park (including industry peak bodies, environmental groups, island research stations and relevant Commonwealth and state government partners) requesting their views on GBRMPA’s permit assessment, compliance monitoring and enforcement activities. The ANAO received eight responses from permit holders (from 152 requests) and 17 responses from general stakeholders (from 67 requests), as well as two unsolicited responses.

2. Processing of Permit Applications

This chapter examines the processing of Marine Park permit applications received by the Great Barrier Reef Marine Park Authority.

Introduction

2.1 The regulatory framework applying to the Great Barrier Reef Marine Park provides the basis for GBRMPA to grant permits, with conditions where appropriate, to applicants on the basis of an assessment that the risks posed by the permitted activities/facilities can be adequately managed. The ANAO examined GBRMPA's processing of permit applications and its management of processing requirements.⁴⁵

Permit application assessment framework

2.2 The GBRMP Act prohibits the conduct of particular activities in the Marine Park without a permit granted under the GBRMP Regulations. The Regulations establish administrative arrangements governing the granting and management of permits, for example in relation to: matters to be considered by GBRMPA during the assessment of permit applications; and the form, term and conditions of permits.

2.3 To guide its staff when processing permit applications, GBRMPA has developed a range of administrative guidance materials to support its issuing of permits in accordance with the Regulations. These materials include:

- policy documents and position statements—covering matters such as environmental impact management, tourism, dredge spoil and disposal, structures, scientific research, and aquaculture;
- permit application assessment procedures—including in relation to environment assessment and management, processing routine and major project permit applications, a permit assessors' reference guide and ancillary guidance (such as native title notifications and applying the assessment criteria specified in the GBRMP Regulations); and

45 The preparation of assessment reports for the delegate's consideration and the development of conditions attached to issued permits is examined in Chapters 3 and 4, respectively.

- templates categorised by permit type—covering most application forms, risk assessments, assessment reports and permits/permit conditions.

2.4 Overall, the guidance materials support the assessment of permit applications by GBRMPA staff. However, permit application assessment procedures are contained in multiple documents that do not clearly address all relevant requirements and processes. In particular, procedural documents:

- are in draft form or overdue for a review/update⁴⁶, with some documentation not subject to review for up to five years;
- do not address all key relevant assessment considerations—including the incorporation of risk assessments into the assessment process; and
- do not indicate how assessors are to develop/tailor assessment reports/coversheets and permit conditions relevant to the activity recommended for approval or refusal.

2.5 To better manage the risks associated with out-of-date, ambiguous or incomplete guidance materials for permit processing, it would be prudent for GBRMPA to streamline and consolidate content, and to clarify and expand coverage.

Processing permit applications

2.6 GBRMPA and QPWS have established a joint permitting system that allows applicants to apply for permits under Commonwealth and Queensland marine park legislation through a joint permit application and assessment process. Once an application is approved, permit holders are issued with a single permit covering the conduct or operation of the activity/facility in both the Marine Park and coast Marine Park. Under current arrangements, GBRMPA assumes the lead role in the assessment of joint permits against Commonwealth and Queensland requirements⁴⁷ (with the exception of camping and education permits that are assessed by QPWS), although delegates from each jurisdiction are required to approve the permits.

46 Most GBRMPA permit assessment procedural documentation nominates a date at which time the documents are expected to be reviewed for currency.

47 The audit examined GBRMPA's assessment of permit applications against Commonwealth requirements only. Most recreational and commercial fishing activities in the Marine Park are subject to state permits and licenses issued by Fisheries Queensland outside of the joint permitting system.

2.7 Permit applications are graded on a four-point scale based on the risk that the proposed activity poses to the Marine Park. Routine applications (Level 1), which constitute approximately 90 per cent of all permit applications, are subject to limited assessment activity. Assessments increase in coverage and detail for applications graded as Level 2, 3 or 4. While GBRMPA has established limited guidance (with examples) to assist its staff to grade permit applications by risk (see Table 2.1), the rationales for the risk level assigned to each permit application are not documented. The improved documentation of rationales for assigned risk levels for each permit application would better demonstrate that permit assessments (and the subsequent permit conditions imposed) are commensurate to the risks posed to the Marine Park from the activities proposed in applications.

Table 2.1: Examples of permitted activities by assessment level

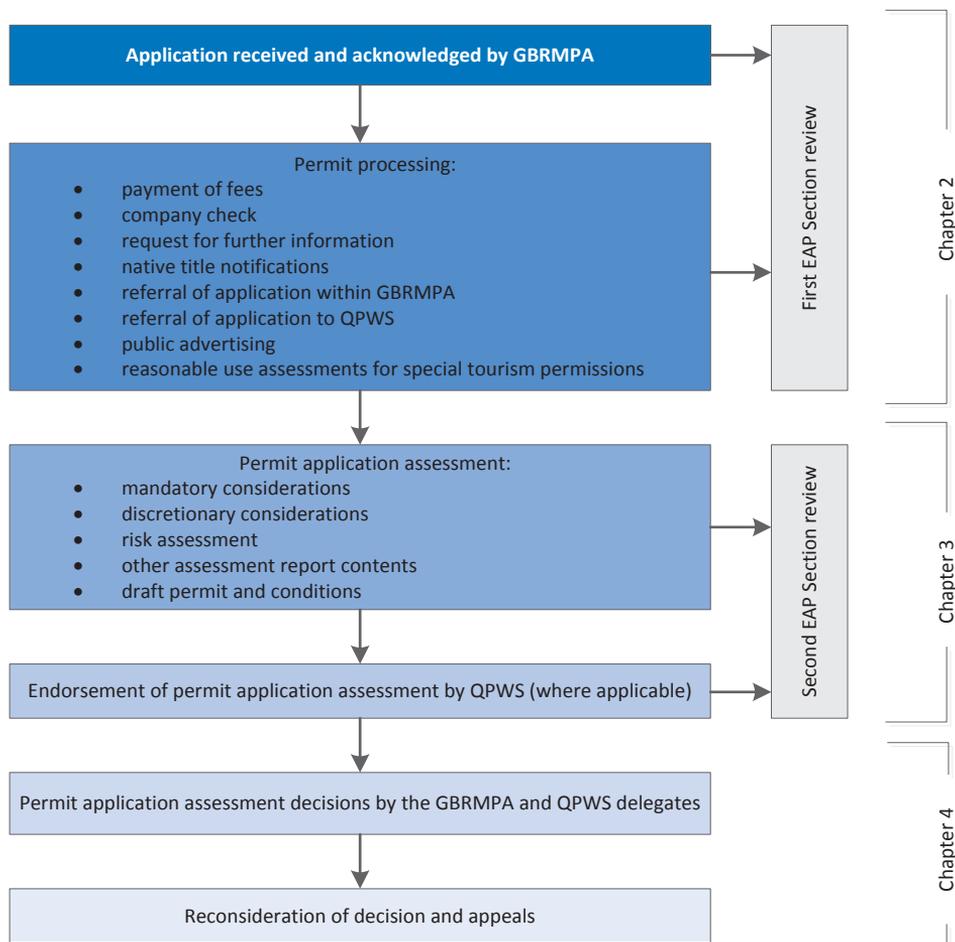
Level of Assessment	Type of Activity	Examples
Level 1 (approx. 90% of permits)	Minor project/operation (minimal and/or transient impact)	<ul style="list-style-type: none"> • Operation of a tourist program, vessel/aircraft charter • Research/education • Take from harvest fishery • Mooring facility
Level 2 (approx. 9% of permits)	Small project/facility (low and/or short term impact)	<ul style="list-style-type: none"> • Construction/operation of: <ul style="list-style-type: none"> – small jetty or pontoon – minor pipelines – barges – snorkel trails
Level 3 (<1% of permits)	Medium scale project/facility (public interest, sensitive environment, moderate and/or medium impact)	<ul style="list-style-type: none"> • Soil disposal from port maintenance dredging • Minor resort/marina facilities
Level 4 (<1% of permits)	Complex or large scale project (public interest, irreversible and/or major impact)	<ul style="list-style-type: none"> • Large capital dredge and/or soil disposal • Major resort/marina facilities

Source: ANAO, adapted from GBRMPA information.

2.8 In general terms, the processing of a permit application involves its receipt, GBRMPA’s collection of relevant documentation and information to undertake an assessment of the application, the preparation of a permit

application assessment report for the delegates' consideration, and, where determined appropriate, the issuing of an approved permit to the applicant. Review procedures and rights are available to interested parties.⁴⁸ The steps involved in the processing of routine Marine Park permits are illustrated in Figure 2.1, along with the report chapters in which the steps are examined.

Figure 2.1: Permit application and assessment process



Source: ANAO analysis of GBRMPA information.

48 Parties who consider their interests may be affected by a Marine Park permit have a right to obtain a written statement of the reasons for the decision and may have a statutory right to request a reconsideration of the decision. For some permits, this right is limited to the permit holder.

2.9 The assessment of routine permit applications is generally desk-based⁴⁹, with GBRMPA retaining assessment records in hard-copy and permit application details and assessment results also recorded in GBRMPA's online database—the Reef Permits database. Key assessment documentation (such as the permit application assessment report) is also scanned and retained electronically within the Reef Permits database.⁵⁰

2.10 The ANAO examined key elements of GBRMPA's processing of permit applications (as illustrated in Figure 2.1 above) by reviewing a sample of assessed applications.⁵¹

Receipt and acknowledgement of permit applications

2.11 Permit applicants complete a template-based application form relevant to their proposed activity and most pay an assessment fee prior to GBRMPA commencing the application assessment process.⁵² The appropriate application form was completed by applicants in all but one case examined by the ANAO (where GBRMPA accepted alternative documentation as constituting the permit application).

2.12 The processing of each permit application is assigned to an assessment officer within GBRMPA. In the period from July 2012 to June 2014, the 786 lodged permit applications were processed by 27 different GBRMPA officers—five of whom processed two-thirds of the applications. Although not required by procedures, the processing of non-routine applications is generally assigned to more senior staff.

2.13 After receipt of an application, GBRMPA has a target of four business days in which to respond to the applicant to acknowledge receipt—which

49 GBRMPA may also inspect the sites of existing or proposed activities/facilities for applications assessed as Levels 2, 3 or 4.

50 As at September 2014, GBRMPA had commenced the transition from the Reef Permits database to a new Reef Management System—an on-line workflow management system to register, assess and issue permits (among other things) that is designed to remove the need for permit assessment documentation to be retained in hard-copy.

51 The sample of 79 permits (from a population of 786 GBRMP permits assessed during the period July 2012 to June 2014)—10 per cent of the population—was broadly selected in proportion with 12 key parameters, including: the assessment officer; and the permits' risk level, status and permission type.

52 The GBRMP Regulations establish the permit application and assessment fees for permissible activities that range from approximately \$650 for most commercial activities to in excess of \$80 000 for activities that require the preparation of an environmental impact statement. Permissible activities that are not of a commercial nature, such as research, do not attract a permit application and assessment fee.

GBRMPA achieved for 51 applications (64.6 per cent) in relation to the permit applications examined by the ANAO. GBRMPA responded to a further 29.1 per cent of applications within two weeks of receipt. However, GBRMPA's acknowledgement of three applications took between three and 10 weeks—in two cases, records were not retained to explain the delayed acknowledgement and in one case the application had been assigned to an officer on leave and did not progress until the officer's return to work. Further, evidence was not retained to indicate that GBRMPA acknowledged the receipt of two applications.

2.14 The comments provided to the ANAO by permit holders relating to the ease of the permit application process indicates that applicants were generally satisfied with the guidance provided by GBRMPA on the application process, which is available on its website. Permit holders also acknowledged the responsiveness, knowledge and helpfulness of Authority staff. Other stakeholders (including peak industry bodies and environmental groups) generally considered that permit arrangements were designed primarily for routine permit applications and the process was not straightforward for less frequent, non-routine applications.⁵³

Payment of application fees

2.15 As outlined earlier, most applicants are required to pay a permit application and assessment fee to facilitate the processing of their permit applications.⁵⁴ In relation to the permits examined by the ANAO, GBRMPA issued invoices to fee-paying applicants requesting payment of the fee (the size of which is dependent on the permit sought) with evidence retained of the payment of fees by applicants on all but one occasion.

Further information requests to applicants

2.16 To facilitate the processing of permit applications, GBRMPA can request further information from applicants relating to their intended operations/activities.⁵⁵ GBRMPA requested additional information from applicants in respect of 48 of the 79 applications (61.5 per cent) examined by the

53 Some stakeholders considered GBRMPA's permits processing approach could be better communicated to infrequent users.

54 GBRMPA is to waive the assessment fee 'if only a minimal assessment is necessary' (Regulation 130).

55 The failure of applicants to substantively address further information requests by the due date can result in the lapsing of the permit application.

ANAO, including in relation to all eight non-routine applications. GBRMPA generally received substantive responses to its information requests, with only a small number of applicants (three) not providing all of the requested information. The information not provided in relation to two of these applications was not material to the processing of the permit applications. Nevertheless, evidence has not been retained to indicate that significant information requested of the applicant of a non-routine application (relating to vessel registration and design, and the need for the permit applicant to upgrade its moorings covered under a separate permit) had been received prior to the approval of the application.

Native title notifications

2.17 GBRMPA is required by the *Native Title Amendment Act 1998* to notify all registered Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants, of a proposed activity that is to be subject to a permit and that is to occur at or near to their claim area(s). However, maps available to help staff to determine the relevant native title bodies to notify are not comprehensive.

2.18 Where a notification is required, it must describe the general nature of the application and provide the notified bodies an opportunity to comment before a permit is issued. GBRMPA has established class notifications for particular categories of routine permit applications (such as vessel operations)—up to a specified number of permits per year—that eliminates the need for GBRMPA to undertake native title notifications on an application-by-application basis.

2.19 In general, GBRMPA has notified native title bodies of permit applications (including 76 of the 79 permit applications examined by the ANAO) and considered responses received as part of the assessment process. Evidence of responses received was not, however, retained in all cases (including eight of the 25 responses received in relation to the permits examined by the ANAO). The small number of responses received had no documented impact on the assessments' content and recommendations, the delegates' decisions and the nature of permit conditions.⁵⁶

56 GBRMPA informed the ANAO in May 2015 of its intention to examine additional methods to more effectively engage with Indigenous groups during permit application assessments.

Referral of applications within GBRMPA

2.20 Standard operating procedures require some permit applications to be referred to other areas of GBRMPA to obtain specialist advice regarding issues that could potentially arise from the applications, such as applications that may significantly impact on water quality or relate to climate change research. In this regard, the permit processing procedures contain guidance that outlines, in general terms, the activities proposed in applications that would require referral to one of eight GBRMPA branches/sections.

2.21 While substantive responses are generally received from those GBRMPA branches/section to which applications have been referred, many applications are not referred when they meet referral thresholds. In relation to the 79 permits examined by the ANAO, 14 applications (17.7 per cent) had been referred to, and substantive responses received from, one or more GBRMPA branches/sections in respect of a range of issues.⁵⁷ However, 26 permit applications (32.9 per cent) that prima-facie met requirements for referral had not been referred in respect of fishery, tourism and research-related issues. GBRMPA informed the ANAO that the specialist knowledge of the assessing officer or the frequent provision of the information required may have negated the need for such referrals. However, these reasons were not retained in assessment records.

Referral of applications to QPWS

2.22 Unless an exemption applies, applications for permits covering both the Marine Park and coast Marine Park are referred for comment via the Reef Permits database to up to four QPWS offices (depending on the location of the proposed activity).⁵⁸

2.23 While many permit applications are referred to QPWS offices for comment, a significant proportion of applications that met referral thresholds have not been referred to the relevant QPWS offices. In relation to the 70 permit applications examined by the ANAO that met referral thresholds:

57 These issues included: eco-tourism certification; proposed research methods and sampling; the preparation and content of key documentation associated with the assessment of controlled actions under the EPBC Act; and proposed permit conditions.

58 In December 2012 and March 2014, GBRMPA and QPWS agreed to streamline the processing of permits by exempting the need to refer some standard permit types (including those relating to vessel and aircraft tourism, charter programs, and standard research) that pose a low risk.

- 58 (82.9 per cent) were referred to one or more QPWS offices for comment (although the only evidence of referral in four cases was references in the assessment reports);
- GBRMPA decided not to refer seven applications for reasons that do not accord with referral exemptions guidance (including four that were not referred as they related to ‘harvest fisheries’); and
- evidence has not been retained to demonstrate that the remaining five applications that met referral thresholds had been referred for comment.

2.24 While QPWS did not make substantive comments in relation to most referred permit applications, on 12 occasions it requested that a copy of the draft permit assessments be provided for endorsement before the assessments were submitted to the delegate for approval (and this issue is discussed in Chapter 4).

Public advertising

2.25 GBRMPA’s permit processing procedures indicate that public advertising may be required for those applications that ‘may restrict the use of part of the Marine Park by the public’—with mooring applications provided as an example.⁵⁹ The comments received in response to permit applications that have been publicly advertised must be considered by GBRMPA as part of the permit assessment process.

2.26 In practice, GBRMPA has inconsistently applied the public advertising requirements for permit applications. Of the permit applications examined by the ANAO, GBRMPA required only one—involving existing moorings—to be publicly advertised. However, GBRMPA did not require public advertising for 11 other permit applications examined by the ANAO that involved facilities, structures and moorings already in place.⁶⁰ GBRMPA’s rationale for not publicly advertising these applications was that the public’s use of the Marine Park would not be further restricted by the continuing existence of this infrastructure. The ANAO also found that one of the existing facilities subject to a permit application (that was not advertised) was an unpermitted structure and, as such,

59 GBRMPA, *Corporate Procedures: Processing of Marine Park Permits Applications—Routine Permits*, unpublished, February 2013, p. 5.

60 Public advertising was also undertaken for a project assessed as a controlled action under the EPBC Act that was later to become the subject of a permit application. Consequently, GBRMPA did not consider it necessary for this application to be publicly advertised.

may have illegally restricted the use of part of the Marine Park by the public. In relation to the only publicly advertised application, evidence has not been retained to indicate that GBRMPA complied with its guidelines to consult with its Communications Unit on the draft text of the proposed advertisement or publish a copy of the advertisement on its website.

Management of permit application processing

2.27 To manage permit application processing requirements, GBRMPA has developed checksheets to document the completion of key processing steps from the receipt of applications to the issuing of permits to approved applicants, and the follow-up of any post-approval requirements (such as the execution of deeds and submission of bonds, where applicable). The checksheets are to be completed by permit assessment officers as the application progresses and provide a sound basis for monitoring whether all relevant steps in the permit assessment process have been undertaken. However, in practice, the checksheets were generally incomplete. Of the 79 permit application assessments examined by the ANAO:

- permit processing checksheets were not prepared/retained for four applications examined (5.1 per cent)—all of which relate to non-routine applications that involve complex processing requirements;
- 42 of the 75 checksheets (56 per cent) contained gaps evidencing the satisfactory processing of the permit applications by assessment officers (including in relation to comments from native title bodies, referrals to/from QPWS, further information requests and the relevance/addressing of certain requirements applying to particular applications).

2.28 With the exception of research applications, the work of assessment officers is to be reviewed within the EAP Section once the permit application assessment process is completed and prior to the preparation of the permit application assessment report. Evidence of the review is to be documented on the permit processing checksheet. While checksheets generally record the review of permit application processing, the significant gaps in the completeness of many of the certified checksheets (noted above) reduces the effectiveness of this review as a quality assurance tool for GBRMPA's permit processing.

Conclusion

2.29 GBRMPA has produced a range of guidance materials to underpin its processing of permit applications. The materials that have been produced are, however, fragmented, ambiguous in parts and do not clearly address all relevant requirements. GBRMPA should revise and finalise its application processing guidance materials—much of which is currently in draft form or overdue for a review.

2.30 The arrangements established by GBRMPA to process permit applications are generally sound. Notwithstanding the established arrangements, sufficient evidence has not been retained by GBRMPA to demonstrate that required assessment activities were satisfactorily undertaken on all occasions. Further, the checksheets established to evidence the completion of key assessment activities were also incomplete, which increases the risk that relevant information was not obtained to inform the delegate's decision on whether to grant or refuse a permit. The subsequent certification of incomplete checksheets within the EAP Section reduces the assurance that they provide as a quality control measure.

Recommendation No.1

2.31 To improve the processing of Marine Park permit applications, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) review and finalise standard operating procedures and administrative guidance for the permit application and assessment process; and
- (b) reinforce to staff the need to document whether permit application assessment requirements have been addressed.

GBRMPA's response: *Agreed.*

3. Permit Application Assessment

This chapter examines the Great Barrier Reef Marine Park Authority's preparation of permit application assessment reports for the delegate's consideration.

Introduction

3.1 The GBRMP Regulations specify a number of mandatory considerations that must form part of the permit application assessment, as well as a number of discretionary considerations. The information gathered from the assessment process is assessed by GBRMPA and presented in a report for the delegate's consideration. The assessment reports also generally contain a recommendation to the delegate as to whether the application should be granted (with conditions) or refused.

3.2 To assist with the processing of routine or lower risk permit applications, which comprise in excess of 90 per cent of all permit applications, GBRMPA has developed permit assessment templates that cover the most common permit types (including in relation to vessel-based tourism, aircraft-based tourism, research and moorings). Within the context of each application type, the templates document GBRMPA's broad assessment against the mandatory considerations and those discretionary considerations that GBRMPA considers are relevant to the assessment of the particular application type. Risk assessments (many of which are also template-based) are also attached to most permit application assessments. Where permit assessment templates are used⁶¹, cover sheets are attached that summarise GBRMPA's consideration of each application, including additional matters relevant to mandatory or discretionary considerations not contained in the templates.

3.3 Permit assessment templates are not used for the assessment of permit applications for major structures, works or facilities (which comprise less than 10 per cent of all permit applications). In these cases, GBRMPA customises the permit application assessments to the requirements of the applications.

61 Multiple templates can form part of a single permit application assessment report where the applicant has applied for multiple permission types (for example, vessel-based tourism and moorings).

3.4 The ANAO examined GBRMPA's assessment processes and the preparation of permit application assessment reports for consideration by the delegate.⁶²

Mandatory and discretionary considerations

3.5 The GBRMP Regulations outline six common mandatory considerations that must be considered by the delegate when making a decision to grant or refuse all Marine Park permits, as well as mandatory considerations for permit applications that involve particular activities, such as 'the take of protected species'.⁶³ In addition, the Regulations outline 11 discretionary considerations that the delegate may take into account when making a decision.

Mandatory considerations

3.6 The permit assessment templates used by GBRMPA contain broad assessments against each of the six common mandatory considerations that are relevant to the respective permit type. The matters considered by GBRMPA when assessing each mandatory consideration are outlined in Table 3.1 (on the following page).

3.7 Overall, GBRMPA's assessments of permit applications contained information that sufficiently addressed each of the common mandatory considerations. While 88 of the 93 template-based assessments (94.6 per cent) examined by the ANAO satisfactorily assessed all common mandatory considerations, five assessments did not contain evidence to demonstrate that all common mandatory considerations had been fully addressed (including in relation to exceeding limits imposed by assessment templates and addressing risks unique to particular applications).

62 The ANAO selected a sample of 79 permits (from a population of 786 GBRMP permits assessed during the period July 2012 to June 2014)—10 per cent of the population—was broadly selected in proportion with 12 key parameters of the population, including: the assessment officer; and the permits' risk level, status and permission type. The 79 permit applications involved 100 separate permission assessments as some applicants sought multiple permissions under a single application.

63 Protected species in the Great Barrier Reef Marine Park include, among others: any species that is a listed threatened species, a listed migratory species or a listed marine species under the EPBC Act; any species of marine mammal, bird or reptile prescribed as endangered, vulnerable, near-threatened or least concern under the *Nature Conservation Act 1992* (Qld). Dugongs, turtles and some shark species are examples of protected species.

Table 3.1: Common mandatory considerations when assessing permit applications

Mandatory Considerations	Matters Considered
a) Impact of proposed conduct on the environment and on the social, cultural and heritage values of the Marine Park	<ul style="list-style-type: none"> • Specifying approved or allowed: <ul style="list-style-type: none"> – zone locations – access/activity/passenger/vessel limits – permit periods – research collection methods • Native title notifications • Consideration of GBR heritage values • Known historic sites protected by legislation
b) Options for monitoring, managing and mitigating the potential impacts of the proposed conduct	<ul style="list-style-type: none"> • Risk assessment • Permit conditions • Compliance monitoring
c) The objectives of the zone (as set out in the zoning plan) where the proposed conduct will take place	<ul style="list-style-type: none"> • Assessment of conduct allowed/not allowed in the different zones
d) Any relevant assessment documentation and conditions attached to any approval or permit granted under the EPBC Act	<ul style="list-style-type: none"> • Considered where applicable (but not usually relevant for routine applications)
e) Written comments received about the application in response to public advertisements	<ul style="list-style-type: none"> • Considered where applicable
f) Any other matters relevant to the orderly and proper management of the Marine Park	<ul style="list-style-type: none"> • Permit conditions that aid GBRMPA, such as: retention of permit; extending permit conditions to cover permit holders' staff; and vessel exchange requirements

Source: GBRMP Regulation 88Q and GBRMPA's permit assessment templates.

3.8 Of the seven customised permit assessments involving major facilities or structures, two satisfactorily considered all common mandatory considerations. However, five assessments (that were approved by the delegate) did not contain evidence to demonstrate that all mandatory considerations had been fully addressed in respect of:

- three assessments involving existing facilities/structures that did not ascertain the condition of all facilities/structures at the time of the

assessment or comment on the significance to the assessment of not having done so⁶⁴;

- one of the three assessments above recommended that GBRMPA approve an environmental management plan (a key management document) that only partially covered the operation of 18 of the 20 existing facilities so as to address the then unlawful operation of these facilities (due to the expiry of the previous permit)⁶⁵;
- one assessment that justified the setting of the bond amount solely on the minimum bond amount for Level 4 projects provided as a guide in GBRMPA's permit assessment policy—without reference to the likely costs to restore the environment and remove the facilities should the development fail or the proponent become insolvent; and
- one assessment that did not specify the proposed permit conditions to be put in place to monitor, manage and mitigate potential impacts (Reg.88Q(b)) and to orderly and properly manage the Marine Park (Reg.88Q(f)). In this case, the reasons for the decision documented by the delegate outlined the relevant permit conditions (to varying degrees of specificity).

3.9 The evidence retained by GBRMPA to demonstrate that it has appropriately assessed permit applications involving the take of protected species (a specific mandatory consideration under Reg.88S) has also been variable. Two of the five affected applications examined by the ANAO met all assessment requirements, while the remaining three were either partially assessed against requirements (one) or were not assessed against any of the requirements (two).

64 Including one assessment report that mentioned that 'several of the [maintenance] certificates state the facilities are fit for purpose subject to the completion of works', but did not indicate that one of the facilities was found to be in such a poor state that it was closed to the public until remedial works were undertaken. The assessing officer did not obtain independent evidence to supplement the representations of the permit holder that the required remedial works had been completed.

65 Although the assessing officer also considered that the environmental management plan should be revised within six months of the approval, no permit condition was attached to the approval to make this a requirement, nor had GBRMPA requested the permit holder to update the plan in the seven months since the permit was approved.

Discretionary considerations

3.10 In addition to the mandatory considerations, the GBRMP Regulations also outline 11 discretionary considerations that may be considered by the delegate when making a decision to grant or refuse a Marine Park permit (see Table 3.2).

Table 3.2: Discretionary considerations during permit application assessments

Discretionary Considerations
a) Requirement under s.37AA of the GBRMP Act to prevent or minimise harm to the environment in the Marine Park
b) The effect the grant of the permission will have on public appreciation, understanding and enjoyment of the Marine Park
c) Impact of the proposed conduct on the conduct of others in the area, nearby, or in the Marine Park, that is being undertaken, is planned or is reasonably foreseeable.
d) Any policies or guidelines issued by GBRMPA about the management of the Marine Park or performance of GBRMPA's functions
e) The capacity of the applicant to fund the development and management of a costly project
f) Whether the proposed conduct has been, or is likely to be, granted under any relevant law of Queensland
g) Any relevant international convention to which Australia is a signatory, or any Commonwealth/State agreement
h) Any relevant law of the Commonwealth or Queensland relating to the management of the environment or an area of the Marine Park
i) Any relevant recovery plan, wildlife conservation plan, threat abatement plan or approved conservation advice under the EPBC Act
j) Whether the applicant is a suitable person to hold such a permission having regard to their: environmental compliance history; and payment of fees and penalties under the GBRMP Act and Regulations
k) Any other matters relevant to achieving the objects of the GBRMP Act

Source: GBRMP Regulation 88R.

3.11 Guidance material produced by GBRMPA to assist staff to determine when to apply the discretionary considerations indicates that only those discretionary considerations that add value to the consideration by the delegate should be addressed. In this regard, the guidance material:

- indicates that some considerations will need to be considered for all applications—specifically: GBRMPA policies and guidelines (Reg.88R(d)); approval of proposal conduct under any relevant law of Queensland (Reg.88R(f)); and payment of fees and penalties under the GBRMP Act and Regulations (Reg.88R(j)(iv)-(vi)); and

- provides examples of matters that could be considered relevant under each discretionary consideration.

Template-based permit application assessments

3.12 The permit assessment templates developed by GBRMPA incorporate information relevant to the assessment of some discretionary considerations for routine permit applications. However, the templates do not incorporate information that is relevant to other discretionary considerations that would apply to most permit application assessments—including two of the three discretionary considerations that GBRMPA considers should be applied to all permit application assessments (as outlined in paragraph 3.11). The ANAO also identified matters relating to a further four discretionary considerations (or parts thereof) that could be relevant to many permit application assessments (see Table 3.3 on the following page).

3.13 Improvements in the coverage of discretionary considerations in the permit assessment templates would minimise: the need for assessing officers to repetitively tailor assessments to address matters that are generally relevant; and the likelihood of relevant considerations being overlooked during assessments. The templates were last updated in March 2013.

Table 3.3: Discretionary consideration matters included in permit assessment templates

Potential Matter for Discretionary Consideration (relevant regulation)	Matter included in Permit Assessment Templates as a Discretionary Consideration?			
	Tourism	Research	Harvest Fisheries	Other
s.37AA of GBRMP Act requirement to minimise harm to Marine Park (Reg.88R(a))	-	-	Yes	-
Impact on public appreciation, understanding and enjoyment of the Marine Park (Reg.88R(b))	-	-	Yes	-
Eco-certification (Reg.88R(b))	No	n/a	n/a	n/a
GBRMPA policies/guidelines (Reg.88R(d)) ⁽¹⁾	No	No	n/a	Yes
Approval of proposed conduct under Queensland law (Reg.88R(f)) ⁽²⁾	No	No	No	No
Site management plans/ arrangements (Reg.88R(h)) ⁽³⁾	No	No	No	No
Plans under the EPBC Act (Reg.88R(i)) ⁽⁴⁾	No	No	No	No
Applicant's environmental history (Reg.88R(j)(i)-(iii))	No	No	No	No
Applicant's payment of fees/ penalties (Reg.88R(j)(iv)-(vi))	Yes	n/a	n/a	Yes

Source: GBRMPA's permit assessment templates. The rows shaded grey relate to those discretionary considerations that GBRMPA considers should form part of every permit application assessment.

Note 1: Current GBRMPA policies/guidelines: Tourism—includes the Managing Tourism Permissions Policy and up to six other tourism policies and position statements; and Research—includes the Managing Scientific Research Policy and up to three other research policies, position statements and guidelines.

Note 2: Relevant Queensland approvals may include: coast Marine Park permits; Marine Safety Queensland authorities; state environmental approvals; and national park permits.

Note 3: GBRMPA has developed Plans of Management for Hinchinbrook, Cairns and the Whitsundays—which are common tourist areas.

Note 4: Recovery plans adopted under the EPBC Act that are relevant to marine species found in the Great Barrier Reef include whales (Blue, Sei, Southern Right and Humpback), marine turtles and sharks (Grey Nurse, Great White, Whale). The only threat abatement relevant to the Marine Park is for the impacts of marine debris on vertebrate marine life. Wildlife Conservation Plans under the EPBC Act that are relevant to permits in the Marine Park include the Wildlife Conservation Plan for Migratory Shorebirds (sourced from the Department of the Environment's website at <www.environment.gov.au> [accessed 18 March 2015]).

3.14 Where templates are used as the basis for permit application assessments, GBRMPA expects assessing officers to tailor template contents or coversheets to address any relevant assessment considerations and risks to the Marine Park not canvassed in the templates. However, in practice, template

contents and/or permit assessment coversheets were rarely varied to take into account relevant discretionary considerations.⁶⁶ Nevertheless, the ANAO found that, of the 93 permit application assessments examined, none fully considered all of the relevant discretionary considerations—many of which are identified by a ‘No’ response in Table 3.3 above—including:

- adherence to GBRMPA policies and guidelines (primarily the ‘Managing Tourism Permission Policy’ in respect of the tourism-related assessments) (Reg.88R(d)) and whether the proposed conduct requires approval under Queensland law (Reg.88R(f))—both of which GBRMPA guidance indicates should form part of all permit application assessments;
- Plans of Management established under Part VB of the GBRMP Act applying to particular areas of the Marine Park (Reg.88R(h));
- threat abatement plans, wildlife conservation plans and recovery plans made under the EPBC Act that apply to particular marine species prevalent in the Marine Park (Reg.88R(i)); and
- applicants’ history of environmental compliance with respect to previous GBRMP permits in relation to tourism, harvest fishery and most other routine permit applications (with the exception of moorings and some research) (Reg.88R(j)(i)-(iii)).

3.15 While acknowledging that discretionary considerations will not be relevant to all application assessments, it would be prudent for the permit application assessments to document those discretionary considerations that permit assessing officers consider are not relevant, or do not add value, to the delegate’s consideration of an application.

Customised permit application assessments

3.16 GBRMPA’s assessment of discretionary considerations for most non-routine permit applications (most of the Level 2 and all of the Level 3 and 4 applications) are customised to the specific nature of the respective applications. As a consequence, most, if not all, discretionary considerations are substantively addressed in each application assessment. The seven customised

66 The exceptions were some GBRMPA policies and guidelines (Reg.88R(d)) for most research applications and the applicants’ compliance history for applications to replace most expiring mooring and research permits (Reg.88R(j)(i)-(iii)).

permit applications assessments examined by the ANAO satisfactorily considered nine of the 11 discretionary considerations (Regs.88R(a)-(h) and (k)). However in relation to the remaining two discretionary considerations:

- five assessments did not consider all relevant threat abatement plans, wildlife conservation plans and recovery plans made under the EPBC Act that applied to the Marine Park (Reg.88R(i)); and
- three assessments did not satisfactorily consider the compliance history of the permit applicant (and related entities) (Reg.88R(j)(i)-(iii)).⁶⁷

Risk assessments

3.17 A documented assessment of risks associated with each permit application allows the delegate to consider the extent to which relevant risks to the Marine Park posed by the proposed activity can be effectively managed. The template-based assessments prepared by GBRMPA make reference to risk, particularly in relation to mandatory considerations Reg.88Q (a) and (b) from the GBRMP Regulations (see Table 3.1 earlier).

Use of risk assessments

3.18 As part of each permit assessment, GBRMPA commonly prepares a risk assessment related to the permitted activity sought by the application. To inform its assessment of relevant risks, the GBRMPA has developed a suite of risk assessment templates for the most common types of permitted activities (such as standard vessel-based tourism operations and research). These templates contain generic risks that can be relevant to the particular permitted activity, including pre-prepared inherent risk ratings and risk ratings after existing controls have been taken into account.⁶⁸

3.19 GBRMPA has not, however, developed risk assessment templates for all permitted activity types and, in their absence, customised risk assessments are

67 Two assessments considered the applicant was a suitable person yet noted that the permit holder had 'a poor record of effectively administering Marine Park permits'. In addition to the non-compliance documented as part of this assessment, other non-compliance was evident in other parts of the permit application assessments in relation to unpermitted facilities/structures identified during the replacement of past expiring permits. One assessment did not consider the compliance history of companies related to the permit applicant—unlike other application assessments for this permit holder.

68 The risk assessment templates were last updated in March 2012.

prepared for some high-risk (non-routine) applications.⁶⁹ Neither template-based nor customised risks assessments were prepared for other permitted activity types, including: moorings; commercial and coral harvest fisheries; crown-of-thorns starfish programs and education programs. These activities constitute more than 8.5 per cent of all permit applications assessed by GBRMPA during the two-year period from July 2012 to June 2014. As a consequence, the delegate's decision to grant or refuse applications for these permitted activity types is not informed by a documented assessment of the risks that the activities pose to the Marine Park.

Assessment of risks to the Marine Park

3.20 In those cases where a risk assessment is prepared, the assessments generally indicated that most high and medium-rated inherent risks could be reduced to low or medium risks due to existing controls. The existing controls related to the establishment of permit conditions (and for tourism operations, the use of better practice guidance). In relation to the 56 permit applications examined by the ANAO that contained a risk assessment, GBRMPA assigned a medium, high or extreme inherent risk rating to 212 risks. GBRMPA considered that all but two risks could be reduced to medium or low after taking into account existing controls. These two remaining high risks related to a non-routine application that was refused a permit.

Consideration of relevant risks

3.21 As template-based risk assessments are not generally tailored by GBRMPA assessors to address the risks posed by each permit application, the assessments have not addressed some relevant risk considerations (while risks that are not relevant to some permits have been addressed). Relevant risk considerations that were not specifically addressed by GBRMPA in relation to the 77 risk assessments examined by the ANAO (involving both template-based and customised risk assessments) include:

- 35 permit assessments (45.5 per cent) that did not consider all aspects of the potential risk of damage to, or unauthorised interference with, coral or marine life from vessels (including reef strike, anchor damage),

69 Customised risk assessments were prepared for the seven non-routine applications that were examined by the ANAO.

people (intentional/accidental damage from permit holders' staff and tourists) and/or equipment;

- eight assessments that did not include risks related to the impacts on other Marine Park users for issues such as aircraft noise, location overcrowding/overuse or privacy; and
- one research assessment to locate dumped munitions from World War II that did not consider the risks to the reef or to the divers involved should the cartridges discharge their contents.

Comparison of permit application risk assessments with other risk information

3.22 As noted earlier, the permit application risk assessments prepared by GBRMPA indicate that most risks to the Marine Park can be effectively managed through existing controls—primarily through permit conditions. Those permit application risk assessments, based on templates, generally reflect GBRMPA's consideration of risks as at March 2012—over three years ago. However, more recent risk information gathered by GBRMPA in a permit risk assessment workshop in September 2014 indicates that existing controls are generally insufficient to detect non-compliance with permit conditions (see Chapter 5 for more information on this matter). In light of the workshop's findings, it would be prudent for GBRMPA to review the risk ratings contained in permit risk assessment templates.

Permit application assessment reports

3.23 The assessments of permit applications by assessment officers against mandatory and discretionary considerations, and risk assessments (where prepared), are included in the permit application assessment reports for the delegate's consideration. In addition, the permit application assessment reports are also to contain reference to: referrals within GBRMPA and/or to QPWS; native title notifications; environmental management charge payments by the applicant; and QPWS endorsement of the draft assessment (where required). While some of these assessment activities have been addressed in assessment reports on all applicable occasions, other matters have been overlooked from time-to-time. In this regard, the 79 permit application assessment reports examined by the ANAO contained references to:

- comments requested and received from other areas of GBRMPA on all 14 occasions where comments were sought;

- QPWS comments received (including 'nil' returns) in relation to 55 of the 58 assessments (94.8 per cent) where applications were referred or QPWS provided unsolicited comments⁷⁰;
- native title notifications sent and comments received (if any) on 66 assessments (83.5 per cent)⁷¹;
- applicants having paid all outstanding environmental management charges (as applicable);
- reasonable use assessments having been undertaken for special tourism permits on all nine relevant occasions; and
- QPWS having been provided with a copy of the draft permit assessment for endorsement prior to them being submitted to the delegate for approval on nine of the 12 occasions where endorsement was requested.⁷²

Management of permit assessments processing

3.24 The draft permit application assessment reports prepared by GBRMPA's assessment officers are to be reviewed within the EAP Section before the reports are submitted to the delegate for consideration.⁷³ Evidence of the review is to be documented on the permit processing checksheet. The ANAO examined evidence supporting GBRMPA's oversight of the development of permit application assessment reports, as well as the timeliness of GBRMPA's permit processing.

70 In relation to the remaining applications, two permit application assessment reports made no or partial reference to the comments received and one report incorrectly noted that the application had not been referred.

71 In relation to the remaining 13 assessment reports: 10 assessments did not refer to native title notifications having been sent or received (nine of which related to non-class notifications); two assessments incorrectly indicated that class notifications were involved when non-class notifications had been sent; and one assessment did not reflect whether comments had been received.

72 On two of the nine occasions, the QPWS endorsement process resulted in the modification to permit details to: insert conditions unintentionally omitted from the expiring permit; and correct the Global Positioning System (GPS) location of moorings. Where QPWS was not afforded an opportunity to endorse the permit assessment as requested: one assessment report incorrectly indicated that endorsement had not been requested; another report confused QPWS' referral comments with endorsement of the application; and while the remaining assessment had not been endorsed by QPWS, the assessment report had noted that endorsement was required.

73 All permit assessments (with the exception of research applications) are reviewed for completeness within the EAP Section two occasions. The first review was examined earlier in Chapter 2.

Review of draft permit application assessment reports

3.25 The review certifies the accuracy and completeness of draft permit applications assessment reports after endorsements have been obtained from QPWS (where requested) and, from April 2013, that the applicants have paid any outstanding environmental management charges and the Reef Permits database has been updated.⁷⁴

3.26 As outlined earlier in Chapter 2, the checksheets, where prepared, generally documented the review of permit application processing and assessment reports, but the significant gaps in the completeness of many of certified checksheets reduced the effectiveness of the reviews as a quality assurance measure. In relation to the 79 permit application assessments examined by the ANAO:

- records supporting only one of the four non-routine permit assessments (without completed checksheets) provides a clear indication that the permit assessment process and the draft permit application assessment report were reviewed within the EAP Section before the assessment report was submitted to the delegate for decision;
- the checksheets do not evidence that the reviews had been undertaken as required for four assessments (5.1 per cent); and
- 48 of the 68 checksheets (70.6 per cent) reviewed by managers were incomplete.

Timeliness of permit application assessment processing

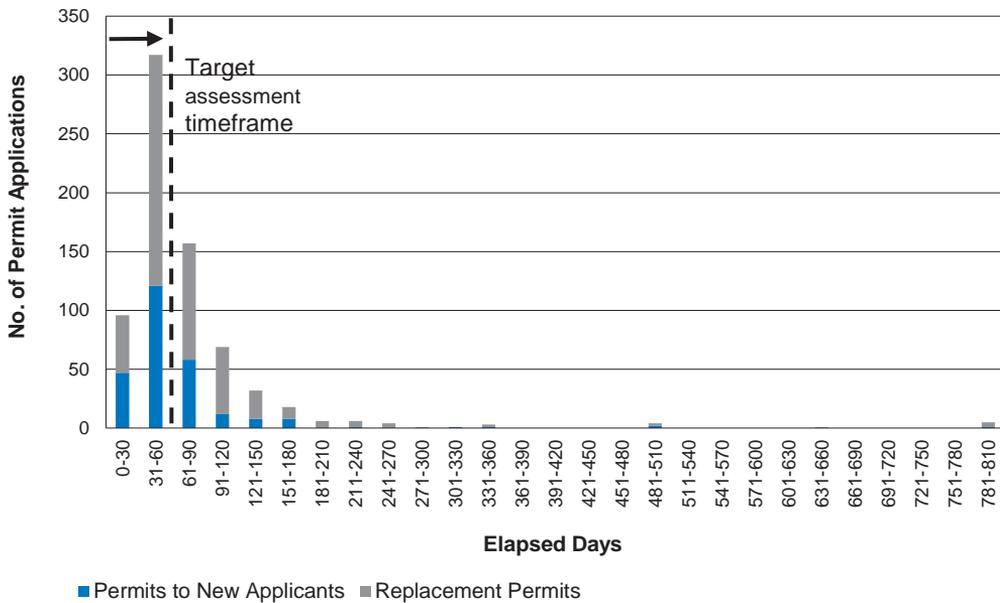
3.27 Minimising the time taken to assess permit applications enables GBRMPA to: facilitate timely access to the Marine Park for new applicants to undertake their permitted activities or operations; and promptly reassess the risks posed by the permitted activities or operations of expiring permit holders who seek a new permit. GBRMPA's permit processing procedures have established a target timeframe of 60 days to assess routine applications. Assessment timeframe targets have not been established for non-routine applications, which are generally more complex and, therefore, expected to take longer to assess.

⁷⁴ Checksheet templates were updated in April 2013 to reflect a new requirement for assessment officers to record, and assessment managers to certify, that applicable environmental management charges had been paid and that the Reef Permits database had been updated.

Assessment timeframes for all permit applications

3.28 In relation to routine applications, GBRMPA has not met its assessment timeframe target for a significant proportion of routine applications, with assessments taking much longer to complete than the target of 60 days. GBRMPA achieved its target timeframe for assessing routine applications 57.4 per cent of the time (413 of the 720 routine applications) during the period July 2012 to June 2014. A further 226 routine applications (31.4 per cent) required up to 120 days to assess, while the remaining 81 applications (11.2 per cent) took between 120 days and around two years to complete. GBRMPA’s assessment timeframes for routine permits to new applicants and current permit holders are provided at Figure 3.1.

Figure 3.1: Elapsed days to assess routine applications (July 2012 to June 2014)



Source: ANAO analysis of GBRMPA information.

3.29 In relation to non-routine applications, GBRMPA required up to 90 days to complete assessments for 15 of the 63 applications (23.8 per cent), and up to a year to assess a further 28 applications (44.4 per cent). Assessments for the remaining 22 applications required between one and nearly four years to complete (with the longest assessment for a new applicant being two years and eight months).

3.30 The ANAO examined eight routine applications and three non-routine applications where the assessments required greater than 120 days and one year, respectively, for GBRMPA to complete. While the reasons for some assessment delays were well-documented, the reasons for other assessments delays was not evident from retained documentation. The ANAO found that:

- routine applications—the assessment of three of the eight applications were delayed for reasons related to: the applicant being overseas for an extended period; the confirmation of permit details with QPWS and the applicant; and the application being considered in conjunction with the assessment of a separate permit application. Reasons for the delayed assessments for the remaining five applications were not evident from retained records; and
- non-routine applications—the assessments for two of the three applications were delayed for reasons related to: the determination of a Commonwealth lease as a precursor to the issuing of the permit; and the extensive consultations involved during the permit assessment and the precursor consideration of the project as a controlled action under the EPBC Act. The assessment for the remaining application remained inactive for six months when the assessing officer was re-assigned to other duties and not replaced, and subsequently for a further three and a half months for reasons not evident from retained documentation.

Stakeholder comments on permit application assessments

3.31 As part of the audit, the ANAO sought comment from stakeholders on GBRMPA’s permit assessment practices. Comments received by the ANAO from permit holders and general stakeholders⁷⁵ (including industry/ environmental peak bodies, government agencies and reef research stations) consistently identified the lack of timeliness as a major issue—particularly for non-routine applications. By way of example, one permit holder indicated that GBRMPA required two and a half years to process its permit application, by

75 The ANAO received eight responses from permit holders (from 152 requests) and 17 responses from general stakeholders (from 67 requests), as well as two unsolicited responses.

which time its application had been handled by four different GBRMPA assessing officers with differing views of assessment requirements.

3.32 While permit holders and other stakeholders expressed some positive or neutral comments on GBRMPA's permit assessment performance, most comments highlighted perceived shortcomings or areas for improvement. The issues raised by permit holders and general stakeholders in submissions provided to the ANAO—apart from the timeliness of application processing—include:

- GBRMPA's scientific skills and knowledge—permit holders and some general stakeholders acknowledged the high level of scientific marine knowledge within GBRMPA, while other general stakeholders considered that additional technical expertise in relation to ports, shipping and dredging would be beneficial;
- communication—permit holders were generally satisfied with their communication with GBRMPA as their permit applications progressed through the assessment process. However, general stakeholders held mixed views, with some satisfied with their communication with GBRMPA while others were dissatisfied;
- the basis for assessments—some general stakeholders expressed concern about 'shifting goalposts' in regards to the information GBRMPA required to assess non-routine applications and a need for GBRMPA to balance the science with 'real-life' operational practicalities; and
- risk management—some general stakeholders considered that permit application assessments would benefit from a more rigorous consideration of risks to the Marine Park based on scientifically documented environmental threats.

Conclusion

3.33 GBRMPA places a heavy reliance on the templates that it has developed to assess mandatory and discretionary considerations and risks associated with the routine permit application assessments that comprise around 90 per cent of all Marine Park permit application assessments. The templates generally facilitated an appropriate assessment of the permitted activities most commonly requested by applicants for the various permit types (such as vessel-based tourism and research) against most mandatory considerations, some relevant

discretionary considerations and identified risks. However, there is scope to significantly improve the coverage and content of assessment and risk templates to better address mandatory/discretionary considerations and risks, respectively, relevant to the assessment of all, or particular types of, permits. These improvements would minimise: the requirement for assessing officers to repetitively tailor assessments to address matters commonly relevant; and the likelihood of relevant considerations and risks being overlooked during assessments.

3.34 On most occasions, template-based permit application assessments are not sufficiently tailored to address relevant regulatory requirements and risks that are not canvassed by the templates. Similarly, the customised permit assessments examined by the ANAO assessed non-routine applications involving structures, works or facilities against most, but not all, mandatory and discretionary regulatory requirements.

3.35 The development of risk assessment templates in early 2012 for common types of permitted activities has assisted GBRMPA to efficiently assess the risks posed by these activities. The lack of templates for some permitted activity types has, however, necessitated the development of customised risk assessments. Further, in the case of some permitted activity types that constitute around 8.5 per cent of approvals (such as moorings and crown-of-thorns starfish programs) neither template-based nor customised risk assessments were prepared. Weaknesses in the identification of risks to the Marine Park posed by proposed activities makes it more difficult for GBRMPA to design appropriate conditions to attach to permits.

3.36 All permit application assessment reports prepared for the delegate's consideration that were examined by the ANAO included the assessments against mandatory and discretionary considerations and risk assessments prepared by the assessment officers. The reports also generally contained reference to, and the results of, other assessment activities undertaken in support of each permit assessment (such as application referrals with GBRMPA and to QPWS, and native title notifications). However, permit assessment checksheets were not completed in full by the assessment officers for some 70 per cent of the assessments examined by the ANAO, and the subsequent certification of assessments as complete has diminished the effectiveness of checksheets as a quality control measure.

Recommendation No.2

3.37 To improve the rigour of permit application assessment and decision-making processes, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) prepare and revise permit application assessment templates and risk templates to better address assessment considerations and risks relevant to the various permit types; and
- (b) reinforce to staff the importance of preparing assessment reports for delegates that adequately address regulatory assessment requirements.

GBRMPA's response: *Agreed.*

4. Permit Decisions and Approval Conditions

This chapter examines the delegate's consideration of permit application assessment reports, the conditions attached to issued permits and follow-up of post-approval requirements.

Introduction

4.1 Once a permit application assessment report has been prepared by the assessment officer, the reports are presented to the GBRMPA delegate (and the delegate from the QPWS) for a decision on whether to grant or refuse the permit. Applicants are then advised of the delegate's decision and their reconsideration/appeal rights, and are to be sent a copy of the permit (where granted). The ANAO examined the:

- basis on which the delegate decided to grant or refuse a permit;
- conditions contained in issued permits; and
- notification of permit decisions to permit holders and others.⁷⁶

Delegate decisions

4.2 The delegations made under the GBRMP Act state that GBRMPA's Chair and senior executives, and directors, managers and project managers within the Environmental Assessment and Management Section (now the EAP Section) have the power to issue Marine Park permits and determine the form, content and terms of approval conditions. In relation to the 786 permit assessments undertaken during the period July 2012 to June 2014, all were determined by an authorised delegate, with the non-routine application assessments generally determined by more senior GBRMPA staff (although there is no established policy in this regard).

4.3 Permit application assessment reports and support material (including, as appropriate: the application assessment file, the proposed permit and

⁷⁶ A sample of 79 permits (from a population of 786 GBRMP permits assessed during the period July 2012 to June 2014)—10 per cent of the population—was broadly selected in proportion with 12 key parameters of the population, including: the assessment officer; and the permits' risk level, status and permission type.

vessel/aircraft/facility approvals; permit cover letter to the applicant; and/or refusal letter) are submitted to the delegate together with a recommendation to approve or refuse the granting of a permit. In 78 of the 79 permit assessments examined by the ANAO, the assessment reports contained recommendations that were supported by the assessments prepared, with the delegate agreeing with all recommendations (76 of which were to grant a permit and two to refuse a permit). Those assessments involving permits that apply to the coast Marine Park were also approved by a delegate from QPWS.

4.4 In relation to the remaining assessment, which related to an application to dump capital dredge spoil in the Marine Park off the coast of Abbot Point, the GBRMPA delegate received an assessment report for this activity that contained four options for consideration. The delegate did not request a recommendation from the assessment officer for this case.⁷⁷ The four options proposed were to either refuse to grant a Marine Park permit or grant a Marine Park permit under three separate scenarios canvassed in the permit assessment.

4.5 The assessment report (and supporting documentation) for this non-routine permit application highlighted high residual risks (that is, risks remaining following treatment) to the Marine Park posed by the proposed activity. The determination of residual risk was informed by an assessment of available documentation (including scientific studies, established environmental standards and documentation prepared by, or on the behalf of, the applicant) against the mandatory and relevant discretionary considerations required under the GBRMP Regulations. The assessment also reflected specialised scientific input provided by different areas within GBRMPA and external organisations.

4.6 During the assessment, GBRMPA staff raised issues regarding the comprehensiveness of information provided by the applicant and the likely effectiveness of the management strategies and potential conditions to manage the risks that the project posed to the Marine Park. The documentation retained by GBRMPA relating to the assessment process did not, however, indicate that these issues were substantively addressed.⁷⁸ Further, the delegate and the assessment team held differing views in relation to aspects of the assessment,

77 GBRMPA informed the ANAO that a recommendation had not been requested because of the complex nature of the permit assessment and the range of approval options available.

78 Shortcomings in the management of records associated with the assessment of this permit application, such as key documents not being retained on assessment files, indicates that there is scope for GBRMPA to improve its record management practices for complex permit application assessments.

including some of the underlying assumptions, the risk analysis and the draft findings and conclusions. GBRMPA informed the ANAO that, given the limited time between the finalisation of the assessment report and the deadline for a decision (less than two weeks), it was not practicable for the assessment report to be modified to address the issues raised by the delegate.

4.7 After considering the final assessment report and supporting documentation, the delegate determined that the most appropriate option was to grant a permit for the project (Option 3). The broad outline of the reasons for the delegate's decision did not, however, fully explain the basis on which the relevant option was selected, nor address the specific issues raised in the assessment report. GBRMPA informed the ANAO that the reason the permit decision was not documented in greater detail primarily related to time constraints caused by statutory deadlines for related approvals, the delayed finalisation of the assessment report, the complexity of the assessment, and the refinement of risk mitigation strategies as part of the development of the permit. A more comprehensive explanation of the basis on which the delegate approved the permit was subsequently provided one and a half months later when GBRMPA prepared and published a statement of reasons in response to a number of requests for such a statement received after the decision was made.⁷⁹

4.8 The delegate's statement of reasons acknowledged gaps in information/modelling/coverage and other uncertainties about the project's impact on the Marine Park environment. Nevertheless, the delegate formed the opinion that the risks to the Marine Park posed by the project could be adequately managed after assessing mandatory and relevant discretionary considerations in light of available information—placing particular emphasis on:

- documentation prepared by, or on the behalf of, the applicant;
- documentation supporting the project's approval by the Commonwealth Minister for the Environment under the EPBC Act and subsequent approval conditions imposed; and
- additional conditions to be imposed under the proposed Marine Park permit.

79 GBRMPA further advised that there is no specific requirement to provide the statement of reasons at the time that a decision is made.

4.9 The nature of the Abbot Point dredge dumping approval, including the high risk posed to the Marine Park and the absence of a recommendation to the delegate, increased the importance of the delegate thoroughly documenting the reasons for the decision at the time it was made.

4.10 Comments received by the ANAO from permit holders and general stakeholders (including industry/environmental peak bodies, government agencies and reef research stations) about the decisions made by GBRMPA indicated concerns regarding: the consistency and transparency of decision-making; the independence of GBRMPA; the objectivity of GBRMPA staff; and GBRMPA's ability to manage its dual responsibilities as conservation managers and the regulator of activities.

Permit decision reconsiderations and administrative/legal reviews

4.11 Persons affected by a decision to grant or refuse a permit can request a reconsideration of the decision by GBRMPA (that may result in the decision being affirmed, varied, set aside or substituted for a new decision). Those persons dissatisfied with the result of decision reconsiderations may apply to the Administrative Appeals Tribunal for a merits review of the decisions⁸⁰, or take legal action in the Federal Court. There are two permit decisions that are currently the subject of legal action.

4.12 One of the permit applications examined by the ANAO has been subject to a request from the permit applicant for reconsideration of the delegate's decision to refuse to grant a Marine Park permit for an existing structure. The original delegate's manager appropriately documented the review of the original decision, and the original decision was affirmed. No Marine Park permit decision examined by the ANAO was subject to a merits review before the Administrative Appeals Tribunal. The matters subject to legal action are yet to be finalised.

Permit conditions

4.13 Permits granted by GBRMPA allow permit holders to undertake activities/operations that would otherwise be unpermitted/illegal under the GBRMP Act. For the permitting regime to be effective, GBRMPA-issued permits must facilitate the holders' conduct of permitted activities within the confines of

80 Part IX of the GBRMP Act.

conditions that manage the risks to the Marine Park and can be enforced by GBRMPA. In addition, permit holders (that can vary from individuals to multinational corporations) must be clearly informed of the activities allowed under, and obligations imposed by, their permits.

4.14 While GBRMP Regulations specify a range of required inclusions in Marine Park permits (such as, the identity of the permit holder, and the dates the permit was granted and expires), they provide GBRMPA with considerable discretion as to the type, form and content of permit conditions. The conditions incorporated in GBRMP permits have been established in the context of laws and regulations that apply to other users of the Marine Park—including the laws of Queensland and general prohibitions contained in the GBRMP legislation—which have been established as standard permit conditions.

4.15 As was the case for permit application assessments, GBRMPA has established a suite of permit templates for routine permit types (such as vessel-based tourism and research) that require minimal tailoring to meet the requirements for each permit. Permit conditions are more extensively tailored or customised to meet the requirements for non-routine permits. The types of conditions commonly found in Marine Park permits are summarised in Table 4.1 (on the following page).

4.16 The ANAO examined the extent to which permit conditions relevant to the circumstances of the permitted activity had been designed to manage identified risks in the sample of permits it examined.

Table 4.1: Common conditions applying to Marine Park permits

Condition Type	Applicable Permits	Condition Details
Standard	<ul style="list-style-type: none"> All permits 	<ul style="list-style-type: none"> Activities undertaken in accordance with Qld laws Permit or certified copy must be held on site/vessel Permit holder must inform staff and participants of relevant restrictions applying under permit, zoning plan, plans of management and Marine Park regulations
Location	<ul style="list-style-type: none"> All permits 	<ul style="list-style-type: none"> Can be broad (such as the entire Marine Park or one of four Marine Park management areas) or specific (particular reefs or a set of GPS coordinates) Limitations/restrictions in particular sensitive/frequent use areas in terms of: access frequency; closures at times of the year; vessel speed limits; vessel/aircraft size; and aircraft flying altitude
Vessels/ aircraft	<ul style="list-style-type: none"> Tourism 	<ul style="list-style-type: none"> Limitations on number, size, passenger capacity Use of fit-for-purpose moorings
	<ul style="list-style-type: none"> Barge 	<ul style="list-style-type: none"> Vessel maintenance, harm minimisation
Specified activities	<ul style="list-style-type: none"> Tourism 	<ul style="list-style-type: none"> Can include swimming, snorkelling, diving, fishing, fish feeding, passenger transport, non-motorised watercraft, motorised watercraft, coral viewing, sail training, whale watching, scenic cruises/flights
	<ul style="list-style-type: none"> Research Harvest fisheries 	<ul style="list-style-type: none"> Limitations on species types, species quantity, collection methods and collection locations
	<ul style="list-style-type: none"> Moorings 	<ul style="list-style-type: none"> Installation, maintenance, harm minimisation
	<ul style="list-style-type: none"> Facilities/works/ structures 	<ul style="list-style-type: none"> Installation, maintenance, harm minimisation Application of environmental management plan Involvement of environmental site supervisor
Indemnity/ insurance	<ul style="list-style-type: none"> Tourism Moorings Facilities/works/ structures 	<ul style="list-style-type: none"> Permit holders indemnify GBRMPA and the State of Queensland against loss or damage Public liability insurance (commonly \$10 million)
Deeds/ bonds	<ul style="list-style-type: none"> Facilities/works/ structures 	<ul style="list-style-type: none"> Reimbursement of site monitoring costs Facilitates the: <ul style="list-style-type: none"> removal of unpermitted/unmaintained facilities/structures at GBRMPA's discretion remediation of sites
Monitoring/ reporting	<ul style="list-style-type: none"> All permits 	<ul style="list-style-type: none"> Varies by permit type (and is examined in Chapter 6)

Source: ANAO analysis of GBRMPA information.

Design of permit conditions to manage risks

4.17 Permit conditions are the primary means through which risks identified during permit application assessments are addressed or mitigated. Overall, most permit conditions have been satisfactorily designed to address many of the identified high or medium-rated risks. Nevertheless, some conditions do not sufficiently address all aspects of some risks—for example, some conditions focus on GBRMPA’s ability to take corrective action should the risks materialise, rather than on preventing the occurrence of risk events. The regular review of standard permit conditions attached to common permit types would provide GBRMPA with additional assurance that significant risks to the Marine Park are being appropriately managed.

Permits to new applicants

4.18 The permissions and conditions included in permits issued to new applicants were generally relevant to the permitted activities that were sought. Of the 26 permits to new applicants examined by the ANAO, 25 (96.2 per cent) contained all relevant permissions and associated conditions, although one permit did not grant access to a location requested by the applicant where activities such as those to be conducted by the applicant can occur.⁸¹ In addition, 10 permits to new applicants contained permissions not requested by the applicants—relating to provision for ‘special charters’⁸² and the types of activities the permit holders could undertake under their permits. GBRMPA did not:

- document in the permit application assessments the rationale for including permissions (and related conditions) that had not been requested by the applicants; and
- draw applicants’ attention to, or provide the rationale for, the inclusion of permissions in permits that were not requested when informing applicants that their permits had been granted.

81 Correspondence between GBRMPA and the applicant regarding the location of the activity was evident during the permit application assessment process. However, the assessment does not document why all locations ultimately requested by the applicant were not included in the issued permit.

82 Special Charter Program conditions, which were introduced by GBRMPA for vessel and aircraft Marine Park permits from 2012, allow permit holders to transport GBRMPA personnel (and others) so that they can undertake Marine Park management activities or other specified activities permitted or allowed under the Zoning Plan.

Replacement permits to current permit holders

4.19 Current permit holders seeking to replace an expiring permit often indicate an intention to continue conducting their existing permitted activities. However, at times, they also request changes to their permitted activities during permit re-application that can require different permissions and conditions in replacement permits than those contained in expiring permits.

4.20 Overall, replacement permits issued by GBRMPA satisfactorily included permissions and conditions relevant to the permit changes requested by current permit holders when seeking the replacement of an expiring permit. Of the 51 replacement permits examined by the ANAO, 14 applicants (27.5 per cent) requested changes (generally relating to changes to locations, equipment, and passenger numbers). The change requests approved by GBRMPA (13 fully and one partially) were correctly incorporated into the replacement permits.⁸³ GBRMPA did not, however, routinely inform applicants of the outcome of its consideration of change requests. Only three of the 14 permit holders were explicitly informed of the results of GBRMPA's assessment of the change requests (two granted in full and one granted in part) when replacement permits were issued.

4.21 In addition to the changes to permits requested by applicants, GBRMPA may impose new or revised conditions in replacement permits that differ from those contained in expiring permits to reflect: new conditions applying to all, or particular types of, permits; or a reassessment of permit risks—particularly in relation to non-routine permits. However, the new or revised conditions were not generally considered explicitly in permit assessments and permit holders were rarely informed of the new or revised conditions that GBRMPA included in replacement permits. Of the 51 replacement permits examined by the ANAO, 42 (82.4 per cent) contained 94 individual new or revised conditions imposed by GBRMPA (of which 66 related to updated standard conditions).⁸⁴ Only 20 of these 94 new or revised conditions (21.3 per cent) were considered explicitly in the permit assessment documentation and permit holders were informed of only nine new or revised conditions (9.6 per cent) when permits were issued. As

83 GBRMPA refused to grant part of a request from one applicant to reduce the restrictions applying to its operations within an area of the Marine Park covered by a Plan of Management.

84 Only new or revised conditions that have substantively altered coverage/content have been taken into account by the ANAO.

outlined earlier, permit holders are more likely to comply with the conditions attached to their permits if obligations have been clearly communicated.

4.22 Comments received by the ANAO from permit holders and general stakeholders in relation to the conditions generally imposed by GBRMPA on granted permits were mixed. Permit holders generally considered that the conditions imposed on their permits were appropriate and reasonable. However, general stakeholders questioned the appropriateness and consistency of conditions across granted permits—with some stakeholders indicating that similar conditions were imposed across permits without due consideration of their relevance to the circumstances, and others indicating that different conditions were included in permits for similar activities.

Notification of permit decisions

4.23 After a decision on the permit application has been made by the GBRMPA and QPWS delegates (as applicable), the permit applicants are to be notified in writing of the decision and sent a copy of their permit (where granted) and any supporting material (such as maps and information guides⁸⁵). Evidence retained by GBRMPA indicates that all permits granted in the ANAO's sample were provided to the permit holder. However, as noted earlier, GBRMPA did not generally draw the attention of permit holders to, and provide the rationale for: permissions granted that were not requested; and new or revised conditions imposed by GBRMPA to permits replacing an expiring permit. As such, there is scope for GBRMPA to better inform permit holders of the permissions granted and new or revised permit conditions in correspondence accompanying the issued permits.

4.24 The appropriateness of GBRMPA's advice to permit holders was also considered by the participants at the permit assessment workshop conducted in September 2014 (which is discussed further in Chapter 5). The participants concluded that the provision of permits to holders may not be sufficient to effectively communicate permit requirements, particularly given that many permit holders—generally tourism operators and researchers—did not read and/or understand their permits. GBRMPA informed the ANAO that it intends to brief each permit holder on the contents of their permit as they are issued.

85 Information guides contain generic information on permit maintenance and conditions relevant to particular types of permits. This information does not, however, explain the new or revised conditions imposed by GBRMPA in replacement permits discussed earlier.

4.25 In addition to the provision of permits to holders, a copy of the permit is also to be provided to the relevant QPWS office(s), with the hard-copy application files and the data in the Reef Permit System database to be updated and finalised. However, documentation retained by GBRMPA to evidence that these steps have been undertaken is incomplete. In relation to the permits examined by the ANAO, the assessment officers' checksheets were not completed on 12 of 73 occasions (16.4 per cent) to indicate that copies of permits had been sent to the relevant QPWS office(s) and that the GBRMPA files/database had been updated and finalised.

Conclusion

4.26 Overall, decisions to issue permits have been made by authorised GBRMPA delegates and the basis on which delegates have decided to grant or refuse a permit have been appropriately documented, which in most cases (78 of 79 examined by the ANAO across all permit levels) was in accordance with a recommendation outlined in the assessment report. In the remaining case where the assessment report was not accompanied by a recommendation, the basis on which the delegate decided to grant a permit for an activity posing high risks to the Marine Park was not fully documented until one and a half months after the initial decision had been made.

4.27 The conditions contained in issued permits, which are determined using permit templates, are generally relevant to the permitted activities sought by applicants and the approval granted by GBRMPA. Most permit conditions have been satisfactorily designed to address many of the identified risks rated high or medium during the assessment process. Nevertheless, some conditions do not sufficiently address all aspects of risks relevant to a significant proportion of permitted activities. To help ensure that significant risks are being effectively mitigated, GBRMPA should periodically review the design of standard permit conditions. Further, issued permits contained new/revised conditions imposed by GBRMPA that related to permissions that were not requested by the applicants and/or differed from conditions contained in an expiring permit. There would be benefit in GBRMPA improving the documentation of the rationale for, and better informing applicants of, new/revised conditions that have been imposed by GBRMPA.

Recommendation No.3

4.28 To improve the effectiveness of permit conditions to manage risks to the Marine Park from permitted activities, the ANAO recommends that the Great Barrier Reef Marine Park Authority periodically review the adequacy of standard permit conditions.

GBRMPA's response: *Agreed.*

5. Compliance Intelligence and Risk Assessment

This chapter examines the compliance intelligence capability and risk assessment processes employed by the Great Barrier Reef Marine Park Authority to assess permit holders' compliance with conditions attached to permits.

Introduction

5.1 Compliance intelligence and sound risk assessment processes underpin an effective regulatory regime. Compliance intelligence received and analysed on a timely basis by GBRMPA can inform the periodic assessment of the risks posed by permits to the Marine Park. These risk assessments can then be used to develop compliance strategies that target the greatest compliance and environmental risks.

5.2 The ANAO examined whether GBRMPA, specifically the Field Management Compliance Unit (FMCU), had effective arrangements in place to collect and manage compliance intelligence and to assess the risks of non-compliance by permit holders.

Managing compliance intelligence

5.3 Compliance intelligence information may, in isolation, be inconclusive and it is the regulator's ability to combine elements of this information and analyse linkages that determines the effectiveness of its compliance intelligence capability. Compliance intelligence should feed into every aspect of compliance management, including planning, risk assessment, monitoring and enforcement activities.

5.4 The FMCU has primary responsibility for collecting and analysing compliance intelligence relating to both permitted activities and activities not subject to permits within the Commonwealth and Queensland jurisdictions of the Great Barrier Reef World Heritage Area. While the FMCU prepared draft guidelines in 2012 for staff performing the intelligence function, these guidelines are yet to be finalised.⁸⁶ The draft guidelines indicate that the FMCU's

86 The FMCU informed the ANAO that the draft guidelines are to be revised by August 2015 to reflect current processes and to incorporate coverage of relevant systems/technology.

intelligence function is centred on four intelligence products: information reports; problem/target profiles; patrol intelligence briefs; and intelligence highlight bulletins.

Information reports

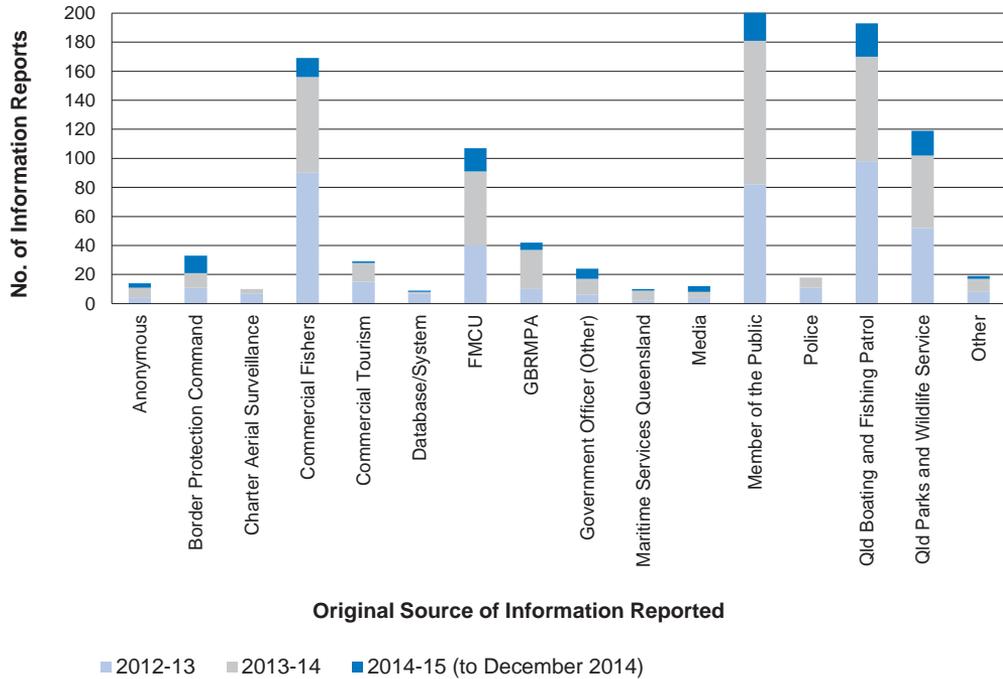
5.5 Information reports are used to record intelligence directly and indirectly relevant to compliance activities in the Great Barrier Reef World Heritage Area that do not constitute incidents. That is, information that is less specific in nature or information that does not enable any clear lines of enquiry to gain evidence of a specific offence. Information reports are often short, free-form statements categorised (according to parameters such their source, date received, relevant jurisdiction, type of activity and statement reliability) to facilitate their subsequent analysis.

5.6 The content of information reports are sourced either from the activities of the FMCU/partner agencies or from information received by the FMCU/partner agencies from other sources, such as members of the public or the fishing/tourism industry. Information reports are stored in the FMCU's Compliance Management Information System (CMIS) database.

5.7 Over the period from July 2012 to December 2014, the FMCU received a total of 1014 information reports (447 in 2012–13, 437 in 2013–14 and 130 in 2014–15 to December 2014), with members of the public, Queensland Government agencies and commercial fishers the source for over two-thirds of reports (see Figure 5.1).⁸⁷ The FMCU and other areas of GBRMPA contributed 151 of the 1014 information reports (14.9 per cent) over this period.

⁸⁷ The original source of compliance intelligence may be different to the entity that submitted the information report.

Figure 5.1: Information reports by original source (July 2012 to December 2014)



Source: ANAO analysis of FMCU Quarterly Reports.

5.8 Over three-quarters of all information reports received by the FMCU related to fishing activities (either one of four types of commercial fishing or recreational fishing—most of which do not relate to GBRMP permitted activities). Information reports related to the tourism industry and research operations (47)—activities that usually require permits—accounted for less than five per cent of all information reports received by the FMCU. While four of the 1014 information reports have been classified as relating to ‘breach of permit’ issues, it is possible that other information reports classified by other issues, such as ‘plans of management’ or ‘unpermitted activities’, may also involve permits but have not been identified as such.

5.9 Of the 51 information reports sourced from GBRMPA (including database/system analysis undertaken by GBRMPA), most related to traditional activities or state-regulated fishing—only 11 related to the commercial net fishing, tourism industry or research operations that can involve GBRMP permits. Given its contact with a large number of permit applicants each year and its compliance monitoring and permit maintenance activities for over 1300 current permit holders, the EAP Section of GBRMPA is well placed to

collect compliance intelligence and contribute to the FMCU's intelligence collection activities. The relatively small number of information reports prepared by the EAP Section indicates that there may be further scope for a greater contribution of compliance information.

5.10 Since July 2014, the FMCU's quarterly reports summarising compliance intelligence have indicated a greater level of integration between the compliance work of the FMCU and that of the EAP Section in relation to permit-related activities. For example, recent quarterly reports: indicate that the FMCU and EAP Section are meeting fortnightly to discuss compliance issues; include compliance monitoring activity undertaken by the EAP Section (such as desk-top audits, site inspections and environmental site supervisor visits); and contain statistics on alleged permit-related non-compliance (by type and location). The improved coordination of the FMCU's and EAP Section's compliance activities has the potential to enhance permit-related intelligence and overall permit compliance management outcomes.

Problem/target profiles

5.11 The FMCU prepares problem/target profiles from time-to-time to gain a greater understanding of problems or individuals so that: problems can be addressed tactically through compliance or policy action; and individuals can be targeted through prevention, intelligence and enforcement activities. The problem/target profiles contain: detailed analysis of compliance incidents and intelligence related to the subject matters, including persons of interest and their vessels (where known); and conclusions or recommendations to address the compliance risks (such as a permit holder not meeting permit conditions) and risks to the Marine Park (such as damage to coral and impacts on water quality). Profiles are added to, and updated, over time until matters are resolved, enforcement action is pursued or persons are no longer considered to be of interest.

5.12 The FMCU informed the ANAO that it has up to 10 problem/target profiles current at any one time covering Marine Park regions, individuals/vessels and particular Marine Park activities. While permitted activities are generally not the focus of problem/target profiles, problems and individuals targeted may involve GBRMPA permitted activities or permit holders.

Patrol intelligence briefs

5.13 The FMCU has developed patrol intelligence briefs for six different regions of the Marine Park, with the briefs reviewed on a monthly basis. The briefs, which are used to inform patrolling officers of the issues and targets that they may encounter while on patrol, outline the current issues in each region, targets (persons) of interest, priority locations, maps recording the locations of reported incidents and a summary of current intelligence. Where applicable, the briefs explicitly address GBRMP permitted activities and permit holders that the FMCU has determined pose a high compliance risk and/or an increased risk to the Marine Park. The briefs are also used to inform the development of plans for each patrol.

Intelligence highlights bulletins

5.14 The FMCU prepares a one-page bulletin, generally on a weekly basis, highlighting a small number of recently received information reports that identify persons and locations of interest in relation to the conduct of illegal activities. The bulletins are distributed to FMCU staff, field operations staff and staff within GBRMPA with an interest in compliance. At times, GBRMP permitted activities and permit holders are the subject of information reports included in the bulletin.

Assessing compliance risks

5.15 A structured approach to risk management enables a regulator to identify, analyse and monitor regulatory risks, and to prioritise and plan compliance activities to mitigate these risks. The FMCU has established a strategic risk register that outlines the key compliance risks to the Marine Park and coastal Marine Park. The FMCU also monitors identified compliance risk treatments on a quarterly basis and undertakes annual reviews of identified risks. To complement this work, in July 2014, GBRMPA's EAP Section developed processes to specifically consider risks to the Marine Park posed by permitted activities.

Strategic risk register

5.16 As part of its annual business planning cycle, the FMCU reviews, and where necessary, updates its strategic risk register (in consultation with other areas of GBRMPA and partner agencies). The 2013–14 and (draft) 2014–15 risk register included 39 compliance risks to the Marine Park and coastal Marine

Park, of which seven related primarily to permitted activities and a further 14/13 related to both permitted activities and activities not subject to permits (see Table 5.1).⁸⁸

Table 5.1: Summary of strategic risk register risk ratings

Risk Rating	All Compliance Risks		Risks Related to Both GBRMP Permitted Activities and Activities Not Subject to Permits		Risks Related Primarily to GBRMP Permitted Activities	
	2013–14	2014–15	2013–14	2014–15	2013–14	2014–15
Extreme	1	2	-	-	1	-
Very High	13	10	2	1	-	1
High	14	14	7	6	3	4
Medium	10	12	5	6	3	2
Low	1	1	-	-	-	-
Total	39	39	14	13	7	7

Source: ANAO analysis of FMCU strategic risk registers.

5.17 Only a small proportion of the ‘Extreme’ and ‘Very High’ rated compliance risks relate to GBRMP permitted activities—with most relating to commercial fishing, vessel groundings or the illegal take of protected species. The highest-rated compliance risk related to GBRMP permitted activities is ‘breach of a Marine Park permit to commercially net in the Princess Charlotte Bay Special Management Area’.

5.18 For each rated risk, the risk register identifies: the areas within the Marine Park and the months of the year that the risk is at its greatest⁸⁹; the intended surveillance/monitoring treatments; and the agencies tasked/ involved in managing the risks. The FMCU has determined that most risks related to GBRMP permitted activities can be addressed exclusively through vessel and aerial patrols (by FMCU and its partner agencies). However, some risks are also addressed through actions from other areas of GBRMPA, for example EAP Section audits of user charges and reports from state government agencies, commercial tourism operators and members of the public.

88 The remaining risks related primarily to illegal or state-regulated activities.

89 High risk periods often coincide with fishing seasons/exclusions or peak visitation times.

5.19 The FMCU strategic risk register includes ‘Breach of a Marine Parks Permit’ as a generic risk for non-compliance related to permitted activities in the Marine Park. The FMCU acknowledges that this is a broad risk category, with consequence and likelihood ratings varying considerably depending on the types of permits. However, for the purposes of developing a single risk rating for permit breaches, the FMCU’s 2013–14 strategic risk register indicated that a risk rating of ‘High’ (based a combination of a ‘Minor’ consequence rating and an ‘Almost Certain’ likelihood rating) broadly reflects the relative consequence and likelihood of the types of permit breaches that are typically reported to the FMCU.

5.20 The 2014–15 strategic risk register continues to record and rate the ‘Breach of a Marine Parks Permit’ as a ‘High’ risk. The FMCU indicated that a permits risk management plan being developed by GBRMPA’s EAP Section (which is discussed later in this chapter) would provide more detailed analysis of the varying risks (and risk ratings) facing the Marine Park from GBRMP permitted activities.

Quarterly forward threat and response analysis

5.21 At the conclusion of each quarter, the FMCU prepares a report on the outcomes of its compliance activities and its re-assessment of compliance risks impacting the Marine Park—a forward threat and response analysis. In preparing the forward threat and response analysis, the FMCU considers whether planned responses to 13 Marine Park activities (which encompass the risks from the strategic risk register) in each of the four Marine Park management areas requires adjustment.⁹⁰

5.22 Three of the 13 Marine Park activities assessed on a quarterly basis during the period July 2012 to June 2014 related to (or related in part to) GBRMP permitted activities—commercial netting, tourism operations, and other (a

90 For administrative purposes, the GBRMP Zoning Plan divides the Marine Park into four discrete management areas: Far Northern; Cairns/Cooktown; Townsville/Whitsunday and Mackay/Capricorn. The GBRMP management areas are taken into account in much of the FMCU’s risk planning/management and patrol activities.

generic category). The content of these quarterly analyses indicates that the threat/response ratings were adjusted⁹¹ on the basis of:

- recent and historical incident reports and intelligence;
- seasonal patterns and trends;
- weather patterns; and
- information from other relevant sources.

5.23 Responses proposed to address identified threats related primarily to vessel, aerial and land-based patrols, supplemented by educational and media activities.

5.24 As outlined earlier, in July 2014, the FMCU and GBRMPA EAP Section recognised the need to specifically assess permit compliance risks and develop a compliance plan specifically related to GBRMP permits (which is discussed in Chapter 6). As part of the increased focus on permits compliance, a new Marine Park ‘activity’—Marine Park permit compliance—was included in the FMCU forward threat and response analysis for the July to September 2014 quarter (which was rated ‘Moderate/Review’ for all four Marine Park management areas).

5.25 FMCU/EAP Section analysis undertaken to date indicates that some types of permit breaches (such as lack of maintenance of permitted facilities, failure to notify GBRMPA of works, and exceeding permit conditions) are likely to have minor to major impacts on the Marine Park, depending on the circumstances. Common treatments identified to date include those listed in paragraph 5.23 in respect of commercial netting and tourism operations, with the addition of:

- education of permit holders (including development and publication of an information guide distributed to all permit holders in December 2014⁹²);

91 The forward threat and response analysis contain three threat/response levels: Low/Maintain—requiring no change treatments in the short-term; Moderate/Review—threat and current response strategies warrant a review; or High/Immediate Response—significant likelihood of non-compliant behaviour and threat to the World Heritage Area requiring immediate attention.

92 The information guide contains generic information on permit maintenance, compliance and conditions relevant to particular types of permits.

- participation in multi-agency audits (involving Queensland Government agencies);
- development of an annual permit compliance plan (discussed in Chapter 6); and
- development of permit compliance procedures for FMCU/GBRMPA staff.

Permit risk assessment

5.26 In September 2014, GBRMPA hosted a permit risk assessment workshop as an initial step towards improving its monitoring and management of compliance risks associated with GBRMP permits. The workshop was attended by all EAP Section staff and selected representatives from the FMCU, other areas of GBRMPA, QPWS and the Department of the Environment.

5.27 The primary purpose of the workshop was to assess all permit categories against a common risk—‘Failure to comply with the intent and conditions of the permit’. Workshop participants considered that a number of factors could give rise to this risk occurring, including:

- lack of awareness of permit holder obligations;
- unintentional non-compliance;
- intentional non-compliance; and
- errors in the permit terms.

5.28 While the permit risk assessment has provided useful insights into the risk of permit non-compliance within the Marine Park, key elements of the assessment remain incomplete. While risk ratings and treatments (where relevant) were documented for all permit risk categories, the impact of risk and the residual risk (that is, the risk rating after treatments) was not documented for most permit risk categories (14 of 17), as was the acceptability of seven of the 17 risk ratings. GBRMPA informed the ANAO that the permit risk assessment will be completed in conjunction with the finalisation of the permit compliance management plan.

5.29 The permit risk assessment indicates that existing controls (which include permit conditions, deeds and bonds, intelligence gathering and analysis, patrols, and other monitoring activities) are generally insufficient to effectively manage the risks posed by GBRMP permits and permitted activities in the Marine Park. After considering the effectiveness of existing controls, workshop

participants rated the risk of non-compliance for over half of the permit categories as 'High to Very High' or greater including in relation to: structures (excluding moorings)—operations; dredging and spoil disposal; aquaculture—disease, genetic changes, pests; take of a species that pose a threat (shark); navigation of a ship/barge; net fishing; take of species that pose a threat (crown-of-thorns starfish); and facilities—works.

5.30 The permit compliance management plan, to be introduced in 2015–16, is expected to rate the potential risks to the Marine Park environment from permitted activities, taking into account the risks of non-compliance determined at the workshop, and identify a range of additional treatments to mitigate unacceptable risks. Potential additional treatments considered during the workshop included: increasing the rigour of permit application assessments; strengthening or refining permit conditions (including a greater use of deeds and bonds); increased compliance monitoring (including the use of enabling technology) and stronger enforcement action.

Conclusion

5.31 The FMCU has established processes for collecting, analysing and disseminating compliance intelligence to inform the identification, assessment and treatment of a broad range of compliance risks that have the potential to impact on the health of the Marine Park. The compliance intelligence obtained from a variety of sources, including from partner agencies and members of the public, is consolidated into information reports that inform compliance activities. In addition to the preparation of information reports, the FMCU also produces a number of tailored documents to support its compliance activities, including targeting profiles and patrol briefs.

5.32 The FMCU has a well-established framework to identify, assess and develop treatments for strategic risks facing the Marine Park, primarily based on the development of a strategic risk register. The risk register is monitored on a regular basis and is updated to reflect changes in the risk environment, for example to reflect compliance incidents and intelligence information. The preparation of quarterly threat and response analyses facilitates the timely adjustment to risk treatments.

5.33 To complement the strategic risk register, which generally addresses a broader range of risks beyond those that specifically relate to permitted activities, GBRMPA has recently taken steps to strengthen its identification and management of permit-related risks. In late 2014, GBRMPA conducted a permit

risk assessment workshop, with a permit risk assessment subsequently developed. While the assessment has provided more targeted information on the risk of permit non-compliance, the usefulness of the assessment has been limited as key elements are incomplete. The completion of the permit risk assessment and the permit compliance management plan will better place GBRMPA to target its limited resources to those risks posing the greatest threat to the Marine Park.

6. Managing Compliance

This chapter examines GBRMPA's management of permit holders' compliance with permit conditions.

Introduction

6.1 The GBRMP Regulations allow GBRMPA to grant permits 'subject to any conditions appropriate to the attainment of the objects of the Act'.⁹³ In this regard, GBRMPA imposes permit conditions that it considers are necessary to manage the risks to the Marine Park posed by proposed activities. As a consequence, permit holders' continuing compliance with permit conditions is a key means by which risks to the Marine Park are managed.

6.2 GBRMPA's EAP Section and the FMCU are jointly responsible for monitoring permit holders' compliance with permit conditions. The ANAO examined compliance monitoring arrangements, including:

- compliance management planning relevant to permits and permitted activities;
- the processing of permit amendments (mostly in response to requests from permit holders);
- the monitoring of post-approval reporting requirements established by permit conditions (which generally relate to the submission, assessment and/or approval of management plans/reports);
- field compliance operations undertaken by GBRMPA and partner agencies, including aerial and vessel patrols of the Marine Park; and
- supplementary permit monitoring activity, including targeted site inspections—discretionary activities undertaken by GBRMPA to address identified compliance risks or risks to the Marine Park.⁹⁴

93 GBRMP Regulation 88ZE(1).

94 The ANAO examined a sample of GBRMP permits current at the time that the sample was selected (August 2014). The sample of 116 permits (from a population of 1158 current permits that had been approved in 2013 or earlier)—10 per cent of the population—was broadly selected in proportion with 12 key parameters of the population, including the permit's: risk level; status; permission types and year of approval. The ANAO examined monitoring activity undertaken by GBRMPA and FMCU in the period from July 2012 to November 2014.

Permit compliance management planning

6.3 The effective planning of compliance monitoring activities helps to ensure that limited resources are directed to those permitted activities that pose the greatest risks. While GBRMPA is yet to establish a risk-based plan to coordinate its permit compliance monitoring activities, it has identified the need for a more structured approach. In early 2014, the EAP Section commenced the development of a permit compliance management plan that is intended to outline the activities, services and resources to be provided by GBRMPA to manage permit compliance in the Marine Park. The plan is expected to be in place for 2015–16.

6.4 The information obtained at the risk assessment workshop conducted in September 2014 (discussed in Chapter 5) will be used to identify, for each permit type, specific risks, treatments and those responsible for implementing the treatments. The expected implementation of an annual permit compliance management plan from 2015–16 to coordinate permit-related compliance activities will better position GBRMPA to manage Marine Park risks posed by permitted activities.

Post-approval permit amendments

6.5 Amendments to permits (including to their conditions and associated nominations⁹⁵) can be required from time-to-time to reflect the changing circumstances of permit holders' operations or to better manage risks to the Marine Park. Most changes to permits are initially requested by permit holders and often relate to a change of personnel authorised to act for the permit holder, changes to vessels/aircraft/equipment nominated under the permit, and permit transfers. Variations to permit conditions can also be initiated by GBRMPA and, with the agreement of the permit holder, incorporated into approved permits.⁹⁶

6.6 GBRMPA generally grants and processes permit holders' change requests after taking into account considerations relevant to the decisions. Of the 116 current permits examined by the ANAO, GBRMPA:

95 Particular vessels, aircraft and equipment may be nominated to operate under the permits. In addition, nominated individuals may be authorised to act on the permit holder's behalf.

96 GBRMPA can also modify permit conditions without consent under certain circumstances, including 'where it is necessary to ... protect the environment, or the living resources, of the Marine Park' (GBRMP Reg. 88ZP(2)(v)).

- appropriately processed 23 requests from permit holders to change vessel/equipment and authorised contacts after establishing the authority of the individuals making the requests and that the requests were within the parameters of the permit conditions (for example, in relation to vessel size and maximum passenger capacity);
- granted 14 permit transfers in relation to 13 permits (with one permit transferred twice) after appropriate assessment⁹⁷; and
- approved two variations to permit conditions requested by permit holders (one of which was to facilitate an assignment of permit responsibilities during a permit transfer and the other a one-off exemption to the application of particular location limitations).⁹⁸

6.7 In addition, GBRMPA initiated, and obtained approval from the permit holders for, the variation of conditions attached to two permits. One variation was made to accommodate a new methodology for undertaking a crown-of-thorns starfish control program and the other to clarify the expression of, and update, facility conditions to bring them into line with current permit condition templates.

Post-approval reporting requirements

6.8 As outlined in Chapter 4, GBRMPA has developed templates containing standardised conditions for most permit types. These standardised conditions generally establish operational parameters for permit holders (for example, location/passenger/species collection limitations) to undertake their activities without direct GBRMPA oversight.⁹⁹ However, some standardised permit conditions have established post-approval reporting requirements that provide an avenue for GBRMPA (and third parties) to be informed of, or involved in, activities related to the holders' permitted operations at key milestones or at periodic intervals. Current permits often include conditions that require permit holders to:

- obtain GBRMPA approval before undertaking permitted activities (including in relation to deeds/bonds, nominated vessels/equipment,

97 No permit transfers were refused in relation to the sample of permits reviewed by the ANAO.

98 While both change requests were likely to pose minimal risks to the Marine Park, GBRMPA could have better documented its consideration of the relevant risks.

99 Table 4.1 in Chapter 4 provides more detailed information on these standardised conditions.

and environmental management plans (EMPs))—75.9 per cent of permits sampled;

- inform or submit documents to GBRMPA (including in relation to death/injury, proposed works, structure installation/removal, compliance certificates, and research reports)—95.7 per cent of permits sampled;
- provide information to GBRMPA on request (including providing evidence of insurance, the removal/clean-up of works, and the submission of works drawings)—82.8 per cent of permits sampled; and
- involve third parties (including, informing QPWS on incidents of death/injury, research stations in relation to research conducted around particular islands, and environmental site supervisors for major works¹⁰⁰)—83.6 per cent of permits sampled.

GBRMPAs' monitoring of post-approval reporting requirements

6.9 In addition to the assessment of permit applications, GBRMPA's EAP Section is responsible for monitoring permit holders' compliance with post-approval reporting requirements established in approved permits. Some permits require their holders to submit and/or obtain GBRMPA's approval of particular documentation soon after the permit has been granted (such as, the execution/lodgement of deeds and bonds) or before work authorised by the permit can commence (such as, research sampling analysis plans). Other permits require permit holders to submit documentation to GBRMPA at regular intervals (such as, annual compliance certificates) or at permit expiry (such as, research fieldwork summaries).

6.10 The extent to which GBRMPA monitors these post-approval requirements has been mixed. While the monitoring of the execution/ lodgement of deeds and bonds has been effective, GBRMPA has not generally monitored the receipt, nor effectively documented its assessment/approval of, most other post-approval reporting documentation that permit holders are required to

100 GBRMPA staff may also undertake the environmental site supervision role.

submit. Of the 185 recently assessed and current permits examined¹⁰¹, the ANAO found that:

- deeds and bonds—40 of the 42 deeds required by permit conditions had been appropriately executed by GBRMPA and the permit holder and documentation supporting the lodgement of all 15 bonds (either cash deposit or bank guarantee) has been retained¹⁰²;
- EMPs—of the 13 EMPs required by permit conditions, GBRMPA documented the receipt of seven (with three of the six missing EMPs due for submission between 2007 and 2011).¹⁰³ Of the seven EMPs received, there was little or no evidence retained of GBRMPA’s assessment of four EMPs and no documented approval of three EMPs¹⁰⁴; and
- additional documentation (such as sampling and analysis plans, communication strategies, fieldwork summaries, annual reports and compliance certificates for structures)—24 permits required permit holders to provide 50 documents to GBRMPA for its assessment and/or approval. Evidence retained by GBRMPA indicated that 11 documents (relating to eight permits)—22 per cent—had been submitted, of which evidence of assessment/approval was retained in relation to only six documents.

6.11 The post-approval reporting requirements in approved permits were initially established by GBRMPA to assist with the management of the risks posed to the Marine Park by permitted activities. GBRMPA’s failure to effectively monitor permit holders’ compliance undermines the effectiveness of these requirements as a means of managing risks to the Marine Park. There is considerable scope for GBRMPA to develop new, and enhance existing, guidance materials and support tools to better assist staff to: monitor the

101 Permits examined by the ANAO include 116 permits current as at August 2014 and 79 permit applications assessed during the period July 2012 to June 2014. Ten permits examined by the ANAO were in both samples.

102 One of the missing deeds was superseded when the permit was transferred to a new permit holder.

103 GBRMPA has yet to request updates to the EMPs for a further two permits—some 15 months after the permits were granted—despite having identified gaps in the coverage of the existing plans. GBRMPA extended the timeframe for the submission of the remaining EMP by one year (to January 2016) at the request of the permit holder.

104 Two of these EMPs establish reporting requirements for permit holders additional to those contained in the permit conditions. However, documentation has not been retained by GBRMPA to indicate that its monitoring staff were aware of, and permit holders met, these additional reporting requirements.

submission of documentation required by permit conditions¹⁰⁵; follow-up outstanding documentation; and track and better document the receipt, assessment and approval of documentation (where required).

Field compliance operations

6.12 The FMCU is responsible for the delivery of compliance activities in the Great Barrier Reef World Heritage Area (which includes the Marine Park and coast Marine Park) based on the analysis of strategic and emerging risks and taking into account the priorities of GBRMPA and QPWS. As at June 2014, FMCU comprised 20.6 full-time equivalent staff with support provided by another 95 full-time equivalent QPWS staff (who undertake a range of functions under the Joint Field Management Program, including patrols).

6.13 As noted in Chapter 5, the FMCU has established a structured process to identify, assess and rate risks (related and unrelated to permits). The FMCU currently manages most risks relevant to permits and permitted activities primarily through:

- small and large vessel, aerial, and land-based patrols; and
- targeted surveillance of high risk activities.¹⁰⁶

Vessel, aerial, and land-based patrols

6.14 Patrols undertaken by GBRMPA and partner agencies under the Joint Field Management Program are the primary mechanism used to monitor compliance and detect non-compliance in the Marine Park and coast Marine Park. Most of the non-compliance detected by patrols relates, however, to activities not subject to permits (such as fishing in protected areas) by users other than permit holders, rather than non-compliance with GBRMP permit conditions.¹⁰⁷ GBRMPA informed the ANAO that it and its partner agencies have achieved the annual target of 800 vessel patrol days across the Marine Park

105 GBRMPA informed the ANAO in May 2015 that it established and implemented new processes for 2014–15 to monitor the receipt of post-approval reporting documentation from permit holders.

106 The FMCU also indicated that long-standing interactions with internal and external stakeholders (including the education of park users through on-ground signage and media releases) have contributed to the treatment of risks to the Marine Park posed by some permitted activities.

107 Many non-compliance incidents detected during patrols are fishing-related. Most of the fishing regulations are established under Queensland legislation and are not subject to the Marine Park permitting regime.

since 2012–13.¹⁰⁸ Since 2012–13, 60-80 aerial patrols and 34-49 land-based patrols have also been undertaken each year.

Planning and conduct of patrols

6.15 A plan is prepared for each patrol that outlines the intended parameters of the patrol (general locations, dates, equipment and resources), locations/activities of interest in the patrol zone and contextual considerations (such as tide times and weather forecasts). These plans are based on templates tailored to the circumstances of the intended patrol that incorporate relevant information from patrol intelligence briefs.¹⁰⁹ While permitted activities are covered in general terms in patrol plans, they are rarely the focus of the patrols.

6.16 Vessel and aerial patrols generally follow a pre-established patrol route with deviations made to more closely inspect sighted vessels or conduct that is of interest to the patrolling officers. Photographic evidence (often time and GPS stamped) is generally collected. During vessel patrols, patrolling officers may board and inspect vessels (with permission of the skipper) operating in the Marine Park. Where potential non-compliance is observed during vessel patrols, patrolling officers will usually attempt contact with those persons of interest thought to be involved in the non-compliance (if readily identifiable) to discontinue, and ascertain the reasons for, the non-compliance. Educational advice and material is also provided, where necessary. Patrolling officers record relevant details of the potential non-compliance in their vessel's log.¹¹⁰

6.17 At the conclusion of each patrol, patrol officers are to examine the patrol vessel's log and any photographic evidence, create incident reports for each instance of potential non-compliance identified, and produce a patrol report. During the creation of incident reports, GBRMPA's permits database is also to be scrutinised to identify whether the potential non-compliance has been committed by a permit holder and whether it constitutes a permit breach. All incident reports are to be recorded in GBRMPA's Compliance Management

108 In 2014–15, the methodology for calculating vessel patrol days completed was revised to more accurately represent patrols dedicated to monitoring compliance by Marine Park users. GBRMPA informed the ANAO it was not possible to adjust vessel patrol day figures for previous financial years to reflect the revised methodology.

109 The FMCU has developed patrol intelligence briefs for six different regions of the Marine Park, which are updated on a monthly basis (and further information on these briefs is provided in Chapter 5).

110 A running sheet with details of the patrol, including: crew, patrol vessel checks, a list of vessels sighted and their registration numbers and any interactions with users of the Marine Park.

Information System (CMIS) and considered by the FMCU for potential investigation and enforcement action (which is examined in Chapter 7).

6.18 The patrol reports prepared typically contain statistics such as the number of vessel sightings and boardings/inspections (by activity type) and a summary of each observed non-compliance incident. Some patrol reports—such as those related to two patrols observed by the ANAO (one vessel and one aerial)—also contain further details, such as information on each vessel sighted. GBRMPA raised incident reports for all seven non-compliance matters detected (none of which were permit-related) on the patrols observed by the ANAO, which were recorded in CMIS. One of the patrols observed by the ANAO is illustrated in Figure 6.1 (on the following page).

Effectiveness of patrols to monitor permit compliance

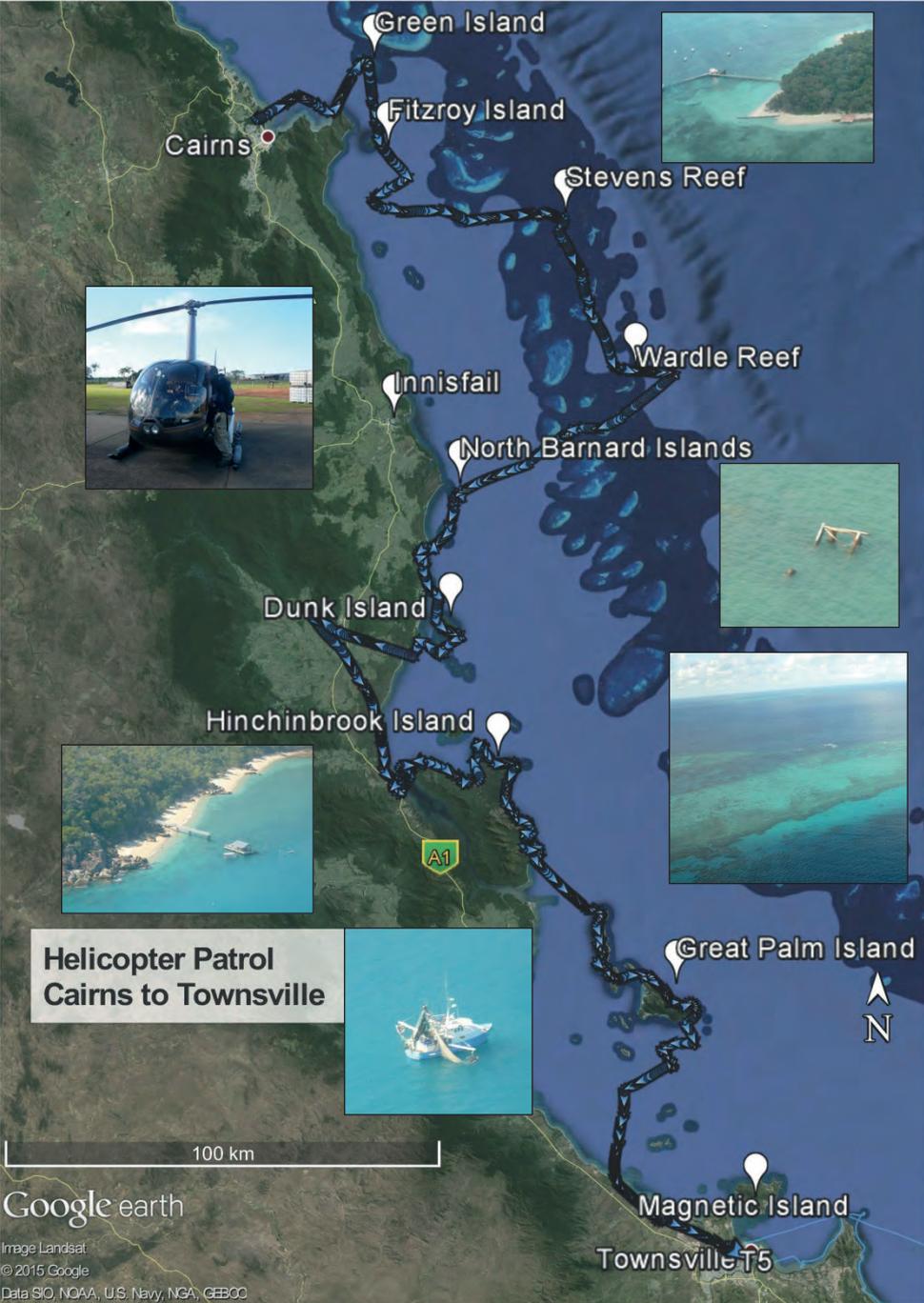
6.19 Patrols can be an effective means of detecting some forms of permit-related non-compliance (such as, vessels that do not retain copies of their permits on-board, vessels operating in excluded areas, exceeding species collection limits, unattended and unmarked fishing nets and moorings not clearly marked). However, there are numerous permit conditions where vessel, aerial and land-based patrols are not suited to observing compliance or detecting non-compliance, including:

- the condition of sub-surface infrastructure, such as mooring chains, jetty/marina pylons, snorkel trail equipment, scientific research equipment, pipelines, and cables¹¹¹; and
- the operation and condition of land-based facilities that require specialist botanical or engineering input (such as sewage treatment plants).

6.20 While compliance with some permit conditions could be determined via desk-based monitoring (such as insurance requirements), specialist skills and/or qualifications would need to be acquired by Joint Field Management Program officers to be in a position to monitor compliance with other conditions (such as the condition of sub-surface infrastructure, which may require diving and engineering certifications).

111 GBRMPA records indicate that there are over 100 wholly or partially submerged structures in the Marine Park.

Figure 6.1: Helicopter Patrol—Cairns to Townsville



Source: ANAO images and map prepared using Google Earth.

Targeted surveillance of high risk activities

6.21 While vessel, aerial and/or land-based patrols are a common treatment to address most risks relevant to permit holders and permitted activities, targeted surveillance has been used to address high risks associated with some permitted activities. For example, GBRMPA and other Australian and Queensland Government regulatory agencies¹¹² have gathered intelligence on unattended nets or the use of unlawful equipment that pose a risk to protected species (including dugongs and crocodiles) in the Princess Charlotte Bay Special Management Area. This intelligence has informed the conduct of targeted surveillance by vessel, air and land that resulted in the successful detection, investigation and prosecution of offenders. In addition, GBRMPA informed the ANAO that it has led, or been part of, multi-jurisdictional inspection teams targeting unlawful activities in the Marine Park during 2014 and early 2015—some of which related to permitted activities (including the conduct of tourist/vessel charter programs and harvest fisheries).

Supplementary permit monitoring

6.22 The effective management of issued permits requires GBRMPA's compliance monitoring staff to maintain an awareness of the status of permit holders' compliance with permit conditions. GBRMPA's monitoring of post-approval reporting requirements established by permit conditions and field compliance operations undertaken by the FMCU and its partner agencies, in isolation, may not in all cases be sufficient to effectively monitor and manage permit compliance. Further, permits may not contain any conditions that provide opportunities for regular or periodic interaction between permit holders and GBRMPA. Consequently, a risk-based supplementary monitoring program is necessary to satisfactorily determine whether permit holders are complying with permit conditions.

6.23 The guidance available to help EAP Section staff to monitor permit holders' compliance with their permit conditions is, however, limited. The only guidance document available for undertaking permit-related compliance monitoring is a draft procedure for determining whether holders of

112 Australian Government agencies include: the Department of the Environment; Australian Federal Police; Border Protection Command and Australian Maritime Safety Authority. Queensland Government agencies include: the Queensland Boating and Fishing Patrol; Queensland Parks and Wildlife Service; Maritime Safety Queensland and Queensland Police Service.

tourism-related permits commence their operations within a set time period after the issuing of their permit (commonly two years unless extensions are granted by the EAP Section).¹¹³ In this regard, each quarter, the EAP Section examines environmental management charges payment data to determine whether permit holders have commenced operations. Of the 15 tourism-related permits examined by the ANAO that were due to commence operations between July 2012 and June 2014, evidence had been retained by GBRMPA to demonstrate that the relevant permit holders commenced operations or sought/received extension to commence operations.¹¹⁴

6.24 In the absence of monitoring guidelines, the EAP Section has established a practice of monitoring the expiry dates of current permits and issuing reminders to permit holders in advance of permit expiry. In relation to the permits examined by the ANAO, the EAP Section reminded permit holders (generally first by email, then by letter if no response was received) of the upcoming expiry of their permits and the need to lodge a permit application should they wish to continue operating.

6.25 As noted earlier, many permits also contain conditions that require permit holders to provide information to GBRMPA on request (such as, evidence of insurance, works reports/drawings/GPS locations, and compliance certificates/inspection reports)—which provides opportunities for the EAP Section to undertake desk-based monitoring of permit holders' compliance with aspects of their permits. In addition, there are avenues for the EAP Section to be involved in field-based compliance monitoring by:

- overseeing installation or maintenance works undertaken for permits involving facilities/works/structures (using the environmental site supervision conditions that many of these permits contain)¹¹⁵; or
- undertaking targeted site inspections (discussed later in this chapter) to determine permit compliance.

6.26 While these avenues are available to GBRMPA, in practice there has been limited risk-based monitoring of permit holders' compliance with permit

113 In late 2014, GBRMPA committed to developing permit compliance procedures for its staff to more effectively manage all Marine Park permits compliance issues.

114 Nevertheless, the reasons for GBRMPA's approval of the extensions were unclear from the documentation retained.

115 Environmental site supervision can be undertaken by the EAP Section, FMCU partner agencies (commonly QPWS) or by contracted individuals/organisations.

conditions after permits have been issued. Of the 116 permit examined by the ANAO, the EAP Section had not initiated or conducted monitoring activities (with the exception of the commencement of tourism permit operations discussed earlier), on a risk basis, in relation to 104 permits (89.7 per cent) over the period from July 2012 to June 2014.¹¹⁶ Documented monitoring activity undertaken by the EAP Section was limited to nine of the 27 facility/works/structure and mooring permits¹¹⁷ and two tourism-related permits in relation to eco-tourism certification considerations.

6.27 In addition to the limited monitoring undertaken, shortcomings in the quality and completeness of some of GBRMPA's monitoring activities were noted during the ANAO's examination of current permits and permit application assessments (for permits replacing those about to expire). These include:

- a failure to detect two unpermitted structures that were observed by FMCU or the EAP Section as early as 2009, but not identified as unpermitted until 2012 and 2013;
- a lack of documentation supporting the follow-up of identified issues or GBRMPA's satisfaction with the actions taken by permit holders to address identified issues; and
- large periods of inactivity when managing issues—for example: a three-year delay in assessing a continuing permit application while awaiting requested documentation from the permit holder; and a 14-month delay between the revocation of a permit for an existing mooring and the EAP Section's consideration of the need to order its removal from the Marine Park.

Site inspections

6.28 In response to potential or emerging risks associated with particular permit holders or classes of permits (most notably, facility/works/structure permits), GBRMPA's EAP section can undertake site inspections of permit holders' operations. GBRMPA has not, however, established a co-ordinated,

116 Monitoring activity had not been recorded in relation to all 19 research permits and 68 of 70 tourism-related permits (97.1 per cent) examined by the ANAO.

117 Compliance monitoring for these permits involved: post-approval reporting requirements; site inspections; desk-based reviews of permit compliance status as part of an assessment of applications for permit replacement/split/transfer; and/or following-up of alleged or identified non-compliance.

risk-based program of site inspections, including a dedicated budget, or determined a target number of inspections to undertake each year. GBRMPA informed the ANAO that site inspections are conducted infrequently due to resourcing constraints. Further, the logistics involved in arranging suitable inspection dates with permit holders, GBRMPA staff and representatives from other agencies (including QPWS and the Queensland Department of Environment and Heritage Protection) adversely impacts on the number of inspections conducted.

6.29 While a co-ordinated risk-based program of inspections has not been established by GBRMPA, a limited number of site visits, audits and inspections have been undertaken. A register maintained by GBRMPA indicates that, over the period from July 2012 to early January 2015, GBRMPA and FMCU partners conducted 34 site visits, audits and inspections (including pre-works surveys/familiarisation visits) for permitted facilities/works/structures, such as dredging activities, jetties, pontoons, pipelines and sewage treatment plants.

6.30 To guide the conduct of the visits, audits and inspections, GBRMPA has developed a comprehensive template covering the planning (including consultation undertaken, past compliance history, and work, health and safety considerations) and conduct of inspections, documentation of findings and post-inspection reporting. The ANAO examined the site inspection documentation for a sample of permits, supplemented by documentation associated with additional inspections of sewage outfall facilities in the Whitsunday Islands in 2013 (five in total). The inspections template was satisfactorily completed in all cases. The completed reports clearly identified the extent of compliance and non-compliance with permit and EMP conditions (and included photographic evidence) and documented an approved course of action to address any non-compliance. The areas of non-compliance observed by GBRMPA included: a failure to develop, or comply with aspects of, the sites' EMP; unauthorised waste discharge or waste discharge exceeding release limits; and the installation of unpermitted equipment.¹¹⁸

6.31 Site inspections are an effective tool to identify aspects of permit compliance/non-compliance that are not readily identifiable through other monitoring methods, such as vessel and aerial patrols. A co-ordinated,

118 Of the four site inspections that identified aspects of permit non-compliance, four aspects of non-compliance at two sites were not recorded as non-compliance incidents in CMIS.

risk-based program of site inspections—as part of a permit compliance management plan—would allow GBRMPA to better demonstrate that it is: appropriately targeting those permits that pose the greatest risks; and efficiently allocating limited resources.

Conclusion

6.32 GBRMPA generally grants and processes amendments to permit conditions and associated nominations requested by permit holders after taking into account considerations relevant to the decisions. In those cases where amendments to permit conditions are initiated by GBRPMA, it has consulted with relevant permit holders as part of the approval process.

6.33 The permits approved by GBRMPA incorporate a range of standardised conditions that generally provide a basis on which GBRMPA can monitor ongoing compliance. However, with the exception of the execution/lodgement of deeds and bonds, GBRMPA does not effectively monitor the timely receipt, nor appropriately document its assessment/approval of, most other post-approval reporting requirements that permit holders are required to submit under their permit conditions. There is scope for GBRMPA to strengthen its monitoring of post-approval reporting requirements, specifically by developing new, and enhancing existing, guidance material and support tools for its staff.

6.34 The FMCU and its partner agencies undertake compliance monitoring within the Marine Park (for both permitted activities and activities not subject to a permit) through field compliance operations based on intelligence and an analysis of strategic and emerging risks. Nevertheless, GBRMPA's monitoring of post-approval reporting requirements and the conduct of field compliance operations, in isolation, do not sufficiently address all aspects of potential permit non-compliance. The delivery of supplementary compliance monitoring activities, such as risk-based site inspections, provides additional assurance relating to certain types of permitted activities, including sub-surface infrastructure. The use of supplementary monitoring has, however, been limited, with weaknesses evident in the delivery and documentation of these monitoring activities. While the limited numbers of site inspections that have been conducted have provided insights into permit holders' compliance, they have not been delivered as part of a co-ordinated, risk-based program.

6.35 Overall, permit monitoring undertaken by GBRMPA has been insufficient to determine permit holders' compliance with permit conditions. Improved monitoring of permit holders' compliance with post-approval

reporting requirements and the establishment of a risk-based program of supplementary monitoring would better position GBRMPA to manage the risks posed to the Marine Park by permitted activities.

Recommendation No.4

6.36 To improve the effectiveness of permit compliance monitoring, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) develop and enhance standard operating procedures for undertaking compliance monitoring activities (including in relation to post-approval reporting requirements); and
- (b) implement a coordinated, risk-based program of compliance monitoring activities.

GBRMPA's response: *Agreed.*

7. Responding to Non-compliance

This chapter examines the arrangements established by the Great Barrier Reef Marine Park Authority to respond to non-compliance with permit conditions, including the frameworks and systems underpinning enforcement.

Introduction

7.1 The conditions attached to GBRMP permits are considered necessary by GBRMPA to manage the risks to the Marine Park posed by the permitted activities. Therefore, ongoing compliance with these conditions requires effective monitoring, with potential or identified non-compliance by permit holders investigated and appropriate enforcement action taken, where necessary. To assess the arrangements established to respond to identified non-compliance, the ANAO examined GBRMPA's:

- enforcement framework;
- recording of non-compliance allegations and incidents; and
- conduct and outcomes of non-compliance investigations.

Enforcement framework

7.2 In mid-late 2013, GBRMPA began developing a compliance management policy and strategy to outline its approach to, and the principles that guide, its compliance and enforcement activities. The latest draft of the compliance management policy (dated March 2014)¹¹⁹ outlines, among other things, the range of compliance and enforcement measures available to GBRMPA, including:

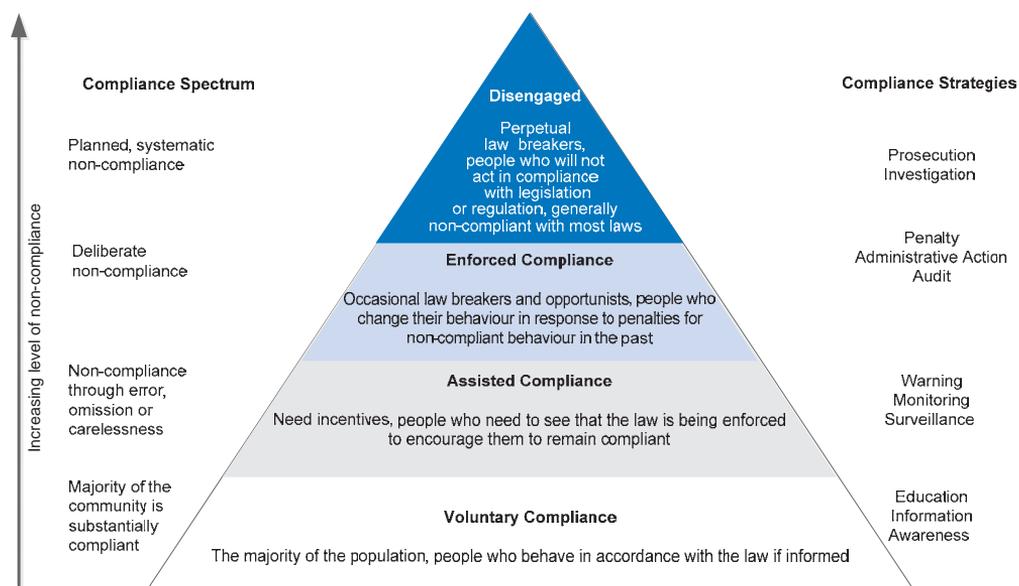
- education, information and awareness measures;
- administrative measures (including cautions, warnings, orders, and the variation/suspension/revocation of permits);

119 GBRMPA informed the ANAO in May 2015 that the draft policy is expected to receive GBRMPA Board endorsement in the first quarter on 2015–16.

- civil remedies (including fines through infringement notices ranging from one to 12 penalty units)¹²⁰; and
- criminal penalties (a maximum of three years jail and/or a fine of 2000 penalty units—for matters related to permit breaches).

7.3 GBRMPA’s broad strategies to address the range of non-compliance are illustrated in Figure 7.1.

Figure 7.1: Graduated range of enforcement responses



Source: GBRMPA Compliance Management Strategy (draft).

7.4 While the overall compliance management policy and strategy remain in draft form, the GBRMPA Chair approved a compliance management policy statement for public release in January 2014—*Policy Statement for Compliance Management in the Great Barrier Reef Marine Park*. The policy statement is designed to provide stakeholders and users of the Marine Park with an understanding of GBRMPA’s approach to the management of compliance (in relation to both permitted activities and activities not subject to a permit). However, as at June 2015, this policy statement had yet to be released.

120 Commonwealth legislation generally specifies fines for offences as ‘penalty units’ rather than a dollar amount. This allows the Government to increase fines through amending one piece of legislation (the *Crimes Act 1914*). Since December 2012, one penalty unit has equated to \$170.

7.5 To support and guide its regulatory compliance activities, GBRMPA has developed a range of materials to assist investigatory and enforcement activities. Those materials directly relevant to permit compliance include:

- *Compliance Management and Investigation Procedures* (last updated in January 2010)—outline the specific requirements that inspectors are to meet when undertaking investigations and investigation-related activities on behalf of GBRMPA;
- *Caution and Infringement Notice System: Guidelines and Procedures* (draft)—to inform inspectors of the considerations relevant to, and procedures for, proceeding with issuing cautions and infringement notices; and
- *Mooring Compliance Management Guidelines* (undated)—to inform and guide field and administrative staff that are responsible for managing mooring compliance in the Great Barrier Reef World Heritage Area.

7.6 GBRMPA's *Compliance Management and Investigations Procedures*, which are based on the 2003 version of the Australian Government Investigations Standards¹²¹, is the primary document used by the FMCU to manage non-compliance incidents and undertake investigations. The procedures, among other things, clearly outline the key investigation requirements, such as the qualification requirements for inspectors, the manner in which non-compliance referrals are to be handled, and case planning and practice requirements.

7.7 The procedures also emphasise the importance of documenting critical decisions and the basis on which they were made throughout the course of investigations. While acknowledging the sound procedural guidance available to FMCU staff with responsibility for conducting investigations, the established guidance for determining appropriate enforcement responses is limited to that contained in the *Caution and Infringement Notice System: Guidelines and Procedures*. These guidelines and procedures only list some considerations relevant to any decision to issue caution and infringement notices, do not align well with other compliance and investigation procedures¹²², and do not clearly identify the

121 The Australian Government Investigation Standards were revised in August 2011.

122 While the GBRMPA Complexity and Priority Model (discussed earlier) provides examples of common permit breaches and categorises them according to their impact, the five-point categorisation scale (Insignificant, Minor, Moderate, Major and Extreme) applied by the model does not align well to the Low, Medium and High impact rating scale used in the *Caution and Infringement Notice System: Guidelines and Procedures* to determine appropriate enforcement responses.

officers responsible for making enforcement decisions. In addition, there is only limited guidance available to assist investigations staff to determine the appropriate circumstances for undertaking alternative responses, which includes: public education; advisory letters (GBRMPA's most frequent response to permit non-compliance); permit suspensions, variations and revocations; and prosecutions.

7.8 There is significant scope for GBRMPA to update and improve the guidance available to its staff on initiating responses to non-compliance in accordance with its compliance policy. Such guidance could include:

- factors to be considered when determining an appropriate response (such as the nature and severity of the harm caused, the objectives of the law, the impact the contravention has on the integrity of the regulatory system, and any aggravating and mitigating circumstances);
- examples of potential enforcement responses to common offences along with their advantages and disadvantages; and
- clearly identifying the GBRMPA/FMCU officers or their positions responsible for making enforcement decisions.

Obtaining and recording non-compliance allegations and incidents

7.9 Sound processes to identify, refer and record non-compliance allow regulators to undertake timely investigations, take proportionate enforcement action and facilitate the establishment of accurate and complete compliance histories that can be used for risk assessment purposes. GBRMPA's draft Compliance Policy indicates that the effective management of compliance is reliant upon the gathering, management, analysis and dissemination of sound regulatory intelligence. To this end, the FMCU maintains a Compliance Management Information System (CMIS) database with on-line access to facilitate the recording, storage, searching and retrieval of compliance-related information.

7.10 A primary source of regulatory intelligence captured in the CMIS database is formal incident reports. GBRMPA's *Compliance Management and Investigation Procedures* require any allegation of non-compliance received by GBRMPA or FMCU partner agencies to be recorded in writing when received (or as soon as practicable thereafter) and forwarded to the FMCU for assessment. The FMCU has developed hard-copy and electronic templates (available on

GBRMPA's website) to encourage the collection of all relevant information relating to non-compliance incidents, including the name of the complainant(s) and source of the allegations.¹²³ A telephone number is also provided on GBRMPA's website to enable complainants to contact the FMCU during business hours and out of hours for incidents requiring an urgent response.

7.11 Incidents and investigations related to breaches of permit conditions have historically represented less than five per cent of all breach incidents and non-compliance investigations recorded by GBRMPA. The CMIS database indicates that there have been 76 reported breaches of GBRMP permit conditions, which have resulted in 59 permit-related non-compliance investigations during the period July 2012 to June 2014.¹²⁴

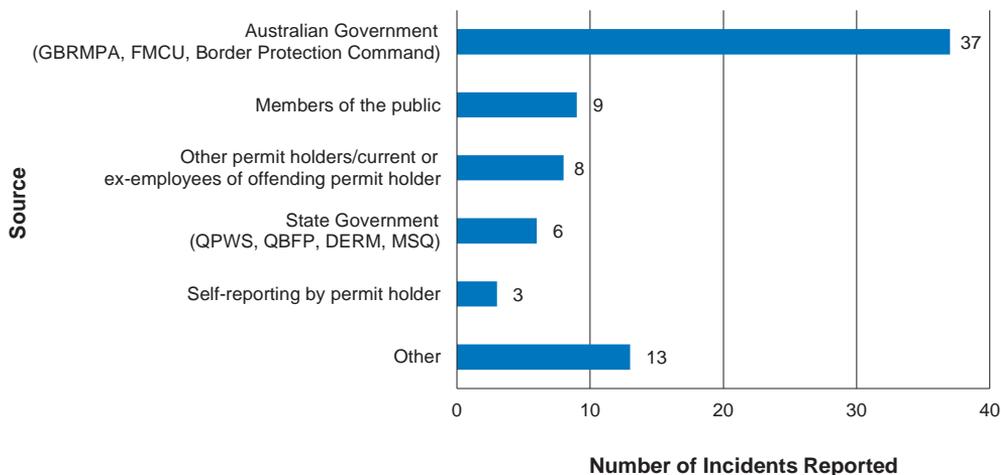
7.12 Nearly half of the permit-related non-compliance incidents recorded in the CMIS database were initially reported by GBRMPA staff (including those from the FMCU and EAP Section) or Border Protection Command¹²⁵ (which had previously been tasked with patrolling areas of the Marine Park by the FMCU). Other sources of permit-related non-compliance incidents were island caretakers, members of the public, other permit holders and current or ex-employees of permit holders (Figure 7.2 provides a the breakdown of sources of permit-related non-compliance incidents).

123 GBRMPA's website allows users to record and lodge incident details, including photographs. Sources of allegations include: members of the public; commercial operators; other Commonwealth or state agencies; audit or review processes; and intelligence and surveillance activity.

124 This data relates to identified incidents and investigations classified as 'breach of permit' in CMIS. However, depending on the circumstances, an individual breach may be classified in multiple ways in CMIS—for example, as a breach of permit, unpermitted activity or breach of a plan of management—and its classification may change over time. As a consequence, there may be additional incidents and investigations related to permits that have not been identified in the ANAO's analysis due to their classification.

125 Border Protection Command reports vessel sightings from its day-to-day border patrol duties, as well as specific surveillance activities tasked by GBRMPA's FMCU.

Figure 7.2: Sources of permit-related non-compliance incidents (July 2012 to June 2014)



Source: ANAO analysis of GBRMPA information.

QPWS: Queensland Parks and Wildlife Service;

QBFP: Queensland Boating and Fishing Patrol;

DERM: former Queensland Department of Environment and Resource Management (now Department of Natural Resources and Mines);

MSQ: Maritime Services Queensland.

7.13 The outcomes from the breach of permit investigations according to the type of the potential breach are summarised in Table 7.1.

Table 7.1: Results of investigations into potential permit breaches (July 2012 to June 2014)

Type of Potential Breach	Investigation Result ⁽²⁾⁽³⁾								
	No. of Potential Breaches ⁽¹⁾	No. of Breaches Investigated ⁽¹⁾	Closed/ No Further Action	Public Education	Advisory Letter	Infringement Notice	Prosecution ⁽⁴⁾	Other ⁽⁵⁾	Active Investigation
Fishing methods/equipment/location	11	11	2	-	6½	½	2	-	-
Pollution/coral damage	3	1	1	-	-	-	-	-	-
Feeding/touching marine species	5	4	1	2	1	-	-	-	-
Structure management/breach of EMP	12	9	2	-	1	-	-	1	5
Tourism bookings/location/passenger numbers	19	14	1	1	12	-	-	-	-
No permit on board	12	9	-	-	9	-	-	-	-
Moorings	7	6	-	-	3	-	-	3	-
Other ⁽⁶⁾	10	7	2	-	2	-	-	-	3
Total	79	61	9	3	34½	½	2	4	8

Source: ANAO analysis of GBRMPA information.

Note 1: Multiple breaches may arise from a single incident. As a consequence, the number of potential breaches and breaches investigated are greater than the number of incidents and investigations, respectively.

Note 2: Multiple enforcement actions may arise from a single investigation, but have been counted only once in this table. As a consequence, a breach that resulted in an infringement notice for one party and an advisory notice for another has been counted as half each.

Note 3: There were no permit revocations, variations or suspensions imposed to address permit non-compliance during the period examined by the ANAO.

Note 4: The penalties imposed by the courts were fines of \$3000 and \$7500.

Note 5: Includes mooring letters and a site inspection report.

Note 6: Includes the failure to submit documentation required by permits, not commencing operations within specified timeframes and collecting species not authorised by permits.

7.14 GBRMPA's EAP Section has an important role in detecting and reporting potential non-compliance by permit holders. The EAP Section undertakes post-approval monitoring of permits, which can include assessing and approving documentation (such as maintenance reports, compliance certificates and

research reports) that permit holders are required to submit periodically or on the achievement of key milestones or events. However, as noted in Chapter 6, some permit holders have not submitted documentation to GBRMPA as required by their permit conditions. While the failure to submit required documentation represents an instance of non-compliance, those detected by GBRMPA have not been recorded as such in many cases.¹²⁶ Of the 81 instances of non-compliance detected by the ANAO from an examination of GBRMPA records (relating to 32 of the 185 permits examined)¹²⁷, only 18 instances relating to one permit (22.2 per cent) had been recorded as non-compliance incidents in the CMIS. GBRMPA informed the ANAO in May 2015 that it had established and implemented new processes for 2014–15 to record in spreadsheets potential non-compliance with post-approval reporting requirements—with any confirmed non-compliances to be also recorded in the CMIS database.

7.15 The failure of permit holders to submit required documentation to GBRMPA reduces the level of assurance that it has in relation to facilities/structures being appropriately maintained and researchers having undertaken their research in accordance with the parameters of their permits. As a consequence, the under-recording of non-compliance by permit holders has implications for the effectiveness of GBRMPA’s strategies to determine and manage compliance risks and risks to the Marine Park. In late 2014, GBRMPA committed to developing permit compliance procedures for its staff to more effectively manage all Marine Park permits compliance issues.

Conduct and outcomes of non-compliance investigations

7.16 The purpose of non-compliance investigations is to examine alleged or prima-facie non-compliance and to determine appropriate responses that are proportionate to the nature of any non-compliance identified. The conduct of the investigation in accordance with relevant procedures and standards and the documentation of the investigation process and resulting decisions help to ensure that investigations are conducted in a consistent and appropriate manner and substantiates any enforcement action taken.

126 The ANAO’s testing also identified permit non-compliance that GBRMPA had not detected (see Chapters 3, 4 and 6).

127 Permits examined by the ANAO include 116 permits current as at August 2014 and 79 permit applications assessed during the period July 2012 to June 2014. Ten permits examined by the ANAO were in both samples.

7.17 In relation to investigations into potential non-compliance, the ANAO examined the: key controls in IT support systems; basis on which the FMCU decides to investigate an incident; planning, conduct and timeliness of the investigations; enforcement decision-making and documentation; and implementation and follow-up of enforcement action.¹²⁸

Key controls in IT support systems

7.18 GBRMPA is placing increasing reliance on IT systems to support its assessment of permit applications (the Reef Permits database¹²⁹) and management of compliance intelligence and enforcement activities (CMIS). An effective control environment, encompassing user and programmer access, change management and data security is, therefore, important for effective decision-making and accurate management reporting.

7.19 The ANAO's review of the Reef Permits database and CMIS found that, overall, GBRMPA had an effective control environment. Nevertheless, there is scope to strengthen current arrangements by: increasing the frequency of reviews of user activity logs and access to the Reef Permits database and CMIS programs and data; reinforcing the need for IT staff to retain documentation for all system changes; and undertaking disaster recovery testing on a regular basis.¹³⁰

Reporting of incidents and decisions to investigate

7.20 In relation to the permit-related non-compliance incidents reported to the FMCU, half were reported within 11 days of the incident occurring.¹³¹ However, three non-compliances observed by the EAP Section were only reported as incidents some five to nine months after site inspections were conducted or the expiry of deadlines to install facilities. A further, well-publicised incident (involving the death of a tourist) was brought to GBRMPA's attention as a breach of permit conditions more than four years after it occurred.

128 The ANAO examined all 76 reported breaches of permit conditions and 59 permit-related non-compliance investigations conducted during the period July 2012 to June 2014.

129 The current transition from the Reef Permits database to the Reef Management System—an on-line workflow management system to register, assess and issue permits (among other things)—will further increase GBRMPA's reliance on its IT systems.

130 In the medium term, it would be beneficial for GBRMPA to consider relocating the server room to a location that is fully compliant with the Australian Government Physical Security Management Protocol and would better mitigate the risks of damage from a major flood or cyclone.

131 Excluding six incidents where the FMCU could not determine when the incident occurred.

7.21 While the hard-copy or electronic templates were not used in all cases to report permit-related non-compliances, sufficient information was obtained in all instances to allow the FMCU to undertake an initial assessment and decide whether the incident warranted investigation. However, evidence has not been retained by GBRMPA to demonstrate that its Complexity and Priority Model for prioritising incidents for investigation had been applied as required by the *Compliance Management and Investigations Procedures*.¹³² The only evidence retained by GBRMPA relating to the prioritisation of incidents for investigation was a notation attached to 15 incidents (19.7 per cent) indicating that the incident was ranked a 'High', 'Medium' or 'Low' priority (without any rationale documented for the priority allocated).

7.22 In general, the decision to investigate (or not), the relevant decision-maker and the date of the decision were appropriately documented for all incidents. However, the reasons underpinning the decisions were not documented in most cases. Of the 76 permit-related non-compliance incidents examined by the ANAO, the reasons for the decisions were documented in only eight cases (10.5 per cent)—with the decision in seven of these cases being to not investigate the incident. The limited documentation prepared by GBRMPA outlining the reasons for its decisions to investigate incidents inhibits its ability to demonstrate that resources have been prioritised appropriately to those instances of non-compliance posing the greatest risks. The preparation and retention of appropriate documentation outlining the reasons for prioritising incidents to investigate would improve GBRMPA's ability to demonstrate the effectiveness and consistency of its investigatory activities.

7.23 While the FMCU has not established target timeframes for determining whether to investigate a reported incident, its decisions on whether to investigate permit-related incidents generally occurred in a timely manner, with most decisions being made within eight days and 80 per cent of decisions made within 44 days. Decisions relating to eight incidents, however, took in excess of

132 Application of the GBRMPA Complexity and Priority Model requires the consideration of the possible impact from any incident (examples of which are provided for each permit type)—categorised on a five-point scale (insignificant, minor, moderate, major and extreme). The investigation priority is based on the impact rating and other factors (such as political/media subject interest, relationship to corporate priorities and potential damage in financial terms)—to arrive at an investigation priority rating of high, medium or low. The complexity of an investigation is based on factors such as the clarity of jurisdiction and offences committed, ease of access to relevant information and number of inspectors required—to arrive at a complexity rating of high, medium or low. The combination of the priority and complexity ratings determines the type and timeliness of GBRMPA's intended response.

three months—all of which related to delays in obtaining timely information or action from areas of GBRMPA outside the FMCU (including the EAP and the Tourism/Stewardship Sections).

Planning and conduct of investigations

7.24 Effectively delivering investigation activities relies upon appropriate planning and skilled staff. All GBRMPA/FMCU staff involved in permit non-compliance investigations over the period July 2012 to June 2014 possessed relevant skills, experience and/or qualifications. The 59 investigations were undertaken by 16 different GBRMPA/FMCU officers—12 (that managed 49 of these investigations) of which have relevant diplomas or Certificate IV qualifications in Government (Fraud Control/ Investigations). The remaining four officers—all based outside of the FMCU—provided key input into 10 investigations into facilities/structure/ moorings management or marine species handling incidents at the direction of the FMCU with a view to potential administrative action.¹³³

7.25 The extent to which GBRMPA plans for the delivery of its investigation activities has been limited with investigation plans and evidence matrices—a requirement for complex/higher priority cases—not prepared for any investigated incidents (including those subject to criminal proceedings). The absence of documented plans for investigations makes it difficult for GBRMPA to effectively monitor investigation activities, including identifying and responding to the delayed provision of information.¹³⁴

7.26 In relation to the conduct of investigations, many FMCU permit-related investigations that involved low-level enforcement responses, such as public education and advisory letters, required minimal investigatory activity. Of the 51 completed permit-related investigations, records retained for 25 investigations do not indicate that any evidence gathering or analysis was required beyond the incidents' initial assessments. In effect, the FMCU determined that sufficient information had been gathered during the incidents' initial assessment to proceed directly to an enforcement response.

133 In April 2015, GBRMPA staff outside of the FMCU who may become involved in non-compliance investigations underwent training and obtained Statements of Attainment—Government Investigations.

134 The recommended minimum standards outlined in the Australian Government Investigation Standards (2011) indicate that investigations should commence with an overall planning process and a written investigation plan, except in urgent circumstances.

7.27 Investigations that did not proceed directly to an enforcement response commonly involved a number of considerations and actions that, in general, supported the enforcement action pursued (including contact/interviews with persons of interest and/or witnesses, substantiation of the offences' location and preparation of briefs of evidence for matters that were lodged with the CDPP with a view to prosecution). However, evidence has not been retained to demonstrate that the compliance history of persons of interest and/or permit holders were considered in nearly three-quarters of permit-related non-compliance investigations (although GBRMPA informed the ANAO that compliance histories are regularly considered during investigations).¹³⁵ The failure to consider compliance history has implications for an investigation's outcome, as it can be considered an aggravating or mitigating factor in determining appropriate enforcement action. In a separate investigation, GBRMPA did not inform the CDPP that an offender being prosecuted had been issued with an advisory letter for similar conduct in the past, which GBRMPA noted could have been raised during the offender's sentencing.

Investigation timeframes

7.28 Investigations should be undertaken in a timely manner to ensure that any non-compliant behaviour is addressed promptly and any adverse impacts arising from the non-compliance are minimised. Further, the application of statutes of limitation to some enforcement remedies (such as infringement notices that must be issued within 12 months of the non-compliance occurring) increases the importance of conducting timely investigations. Taking these considerations into account, setting target timeframes for the completion of investigations helps regulators to monitor the performance of investigating activities. The FMCU is, however, yet to establish target timeframes for the conduct of investigations and, while the status of all open investigations is reviewed weekly (and included in management reports prepared monthly), the FMCU does not monitor the overall timeliness of its investigations. The establishment of target timeframes for completing investigations and taking enforcement action would better position GBRMPA to more effectively monitor the performance of its investigations function.

135 In 22 cases (37.3 per cent), the persons of interest/permit holders had either a fair or poor compliance history.

7.29 In the absence of established targets and routine monitoring, the ANAO examined the timeliness of permit-related non-compliance investigations. The ANAO's analysis identified that around half of the 51 finalised cases were completed within a relatively short time period (10 days or less), with most of these involving incidents that proceeded directly to enforcement action (as outlined earlier at paragraph 7.26). Nevertheless, the average duration of completed permit-related investigations—98 days (ranging from 0 to 644 days)—indicates that extended timeframes were required to finalise a significant proportion of investigations (including seven that required six months or more to complete). In addition, there were eight active permit-related investigations as at December 2014 that had been underway for between 83 and 813 days.

7.30 The overall timeliness of permit-related investigations has been heavily influenced by consistent, lengthy delays in obtaining timely information or action from areas of GBRMPA outside the FMCU—despite reminders from the FMCU. Management reports prepared by the FMCU indicate that, as at 10 April 2015, the status of 44 of the 151 open investigations (into permitted activities and activities not subject to a permit) had been recorded as 'Pending Advice from Permit Compliance [EAP Section]'—including 13 investigations where the last recorded update occurred between the period October and December 2014. In particular, the documentation in case files for 10 permit-related investigations involving facilities or structures examined by the ANAO does not sufficiently explain delays of months, and even years, in some cases, relating to information being provided by other areas of GBRMPA. In two cases, enforcement actions were 'downgraded' from advisory letters to public education measures as a direct result of the length of the investigation. Further, the records retained by GBRMPA do not indicate the reasons for the: periods of between three and nine months where no progress was made; or taking of enforcement action was delayed after the decision was made for a further three investigations.

Enforcement decision-making

7.31 As noted above, FMCU's procedural and guidance material has not clearly established those officers within GBRMPA/FMCU that are responsible for determining appropriate enforcement action for breaches of permits. In addition, on many occasions, sufficient information has not been retained to clearly identify the officer that approved the enforcement response for permit non-compliance

and when the decision was made.¹³⁶ The ANAO found that the officer making the enforcement decision and the date when the decision was made was unclear in 21 cases (41.2 per cent) and 18 cases (35.3 per cent), respectively.

7.32 In general, the reasons for the enforcement action applied for permit non-compliance have been poorly documented. For the 51 completed permit-related investigations examined by the ANAO, the FMCU had retained documentation to sufficiently explain the reasons underpinning the enforcement decision in only seven cases (13.7 per cent). In the case of 30 permit-related investigations (58.8 per cent), no documentation has been retained to explain the reasons underpinning enforcement decisions (with partially complete documentation retained for the remaining 14 investigations).¹³⁷ The absence of reasons for enforcement decisions makes it difficult for GBRMPA to demonstrate the appropriateness and consistency of its decisions, including issuing advisory letters to offenders with a history of poor compliance¹³⁸ and pursuing different enforcement outcomes for prima-facie similar offences.

7.33 Given the identified weaknesses in enforcement decision-making, there is considerable scope for GBRMPA to deliver more consistent decision-making by improving the documentation of its enforcement actions by:

- explicitly considering all relevant factors, including aggravating and mitigating circumstances, when determining an appropriate response; and
- examining how the proposed enforcement action compares to recent decisions for relevant past cases.

Implementation of enforcement actions

7.34 Enforcement decisions, once taken, are required to be executed effectively to achieve the intended purpose of addressing non-compliance. In relation to permit-related non-compliance, this commonly involves the provision of advisory notices to, or public education of, offenders and the receipt of

136 The officer making the enforcement decision may be different to the investigating officer (who may recommend a course of action), the officer who informs the offender/permit holder of the decision or the officer who records the case information in the CMIS database.

137 The type of enforcement action taken (such as advisory letter or prosecution) had little or no bearing on the extent to which reasons for decisions were documented.

138 A poor compliance history is an aggravating factor to consider when determining an appropriate enforcement response. In those circumstances where a permit holder has a poor compliance history, a more punitive measure may be necessary to discourage future non-compliance.

infringement notice fines. Overall, enforcement actions have been executed as intended by GBRMPA and the FMCU, including: for 33 of the 35 investigations that resulted in advisory letters being sent to offenders¹³⁹; and an offender's payment of a permit-related infringement notice fine. Nevertheless, there were a small number of cases that indicate that GBRMPA's implementation of enforcement activities may benefit from further attention, such as non-compliance investigations resulting in public education enforcement actions that were closed before the education of the offender/permit holder occurred. As at April 2015, education action had yet to take place in respect of at least two cases some five to seven months after the enforcement decision.

Conclusion

7.35 While GBRMPA is working to establish a suite of compliance policy, strategy and guidance documentation, the material developed to date is generally in draft form and does not address all relevant considerations. Further, the established guidance for staff determining appropriate enforcement responses is limited. There is significant scope for GBRMPA to improve compliance and enforcement guidance materials to assist staff to effectively respond to non-compliance in a consistent and timely manner.

7.36 Many instances of non-compliance that were evident from GBRMPA's permit monitoring activities undertaken by the EAP Section were not reported to the FMCU and, as a result, were not recorded in CMIS to enable analysis and assessment to be completed. These weaknesses in documenting permit non-compliance adversely impact on GBRMPA's ability to develop an informed view of risks posed and address non-compliance in a timely manner.

7.37 Where permit-related non-compliance incidents have been recorded, procedures determining those matters to be investigated and their relative priority for investigation were generally not followed by the FMCU. In relation to the conduct of permit-related investigations, the evidence gathered generally supported the enforcement action that was pursued by the FMCU. Nevertheless, on many occasions, evidence was not retained by the FMCU to indicate that permit holders' compliance histories were taken into account as part of the investigation process.

139 Advisory letters issued for permit-related breaches in two other investigations failed to mention the permit number and the condition that was breached.

7.38 Most permit-related incidents observed by or reported to the FMCU or partner agencies were recorded in CMIS in a timely manner, and most initial assessments and investigations were also undertaken in a timely manner. However, investigations that required information sourced from, or action to be undertaken by, GBRMPA areas outside of the FMCU (most notably, the EAP Section) were, in a significant number of cases, considerably delayed. Delays in conducting and concluding the investigations has the potential to increase the risks posed to the Marine Park and adversely impact on investigation outcomes, for example the imposition of a lesser enforcement response than may be warranted, as has occurred in a small number of cases.

7.39 In general, the documentation of enforcement decision-making in relation to permit-related non-compliance has been poor. The absence of appropriate guidance material for investigation staff coupled with poorly documented reasons for enforcement actions taken makes it difficult for GBRMPA to demonstrate the basis for its enforcement decision-making.

Recommendation No.5

7.40 To improve processes for responding to instances of permit non-compliance, the ANAO recommends that the Great Barrier Reef Marine Park Authority:

- (a) update and finalise guidance documentation for managing non-compliance;
- (b) reinforce to staff the need for all instances of non-compliance by permit holders to be reported and recorded in the Compliance Management Information System;
- (c) document the reasons for key decisions taken during permit investigations, including whether to investigate incidents and enforcement decisions; and
- (d) verify that enforcement action has been undertaken prior to the closure of investigations.

GBRMPA's response: *Agreed.*



Grant Hehir
Auditor-General

Canberra ACT
13 August 2015

Appendices

Appendix 1 Response from the Great Barrier Reef Marine Park Authority



Australian Government
Great Barrier Reef
Marine Park Authority

Mr Mark Simpson
A/General Manager
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Simpson

Thank you for your letter dated 2 July 2015, providing the Australian National Audit Office proposed audit report on *Regulation of Great Barrier Reef Marine Park Permits and Approvals*.

Pursuant to sub-section 19(4) of the *Auditor-General Act 1997*, the Great Barrier Reef Marine Park Authority (the Authority) has prepared this response to the report.

The Authority agrees without qualifications with all five recommendations contained within the report. We had already identified the need to strengthen our permissions system through commitments in the *Great Barrier Reef Region Strategic Assessment Program Report* and commenced strengthening permissions system activities as part of our 2014-15 work program. The recommendations from your report will be incorporated into this work as part of the Authority's *Corporate Plan 2015-2020*.

Over the next four years, we will stage the implementation of initiatives designed to enhance and strengthen the permissions system while maintaining high environmental standards to address the recommendations of the report. As part of our strengthening permissions system work program, we have already instigated the following actions:

- *Assessment and Decisions Enhancement Project* - this project commenced in 2014-15 and has been designed to enhance the effectiveness of the permission system to achieve objectives and outcomes for the protection and management of the Marine Park, as well as harmonise requirements with relevant Commonwealth and State legislation and reduce regulatory burden.

As part of this project, the Authority will review and strengthen guidelines to include new and revised standards for ecosystem health and develop new guidelines to complement existing arrangements. These guidelines will be implemented through a documented administrative system and electronic information management system. Also as part of this project, the Authority will revise the existing risk assessment templates to ensure the Environmental Impact Assessment risk management framework is consistent with the overall agency risk management framework, and that all permission types are addressed. In 2015, the Authority engaged a third party to develop a *Decision Making Training Module* for all staff involved with the assessment of permit applications. This module included guidance for staff on how to prepare assessment reports for delegates.

- *Strengthening Permissions Compliance Action Plan 2015-2020* - this action plan was developed in 2014-15 and will facilitate the sustainable delivery of an enhanced permission compliance program, which demonstrates regulatory integrity and consistency with Australian Government requirements.

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The action plan will be implemented through the application of strategies to ensure risk-based enforceable permission conditions, tailored engagement with the regulated community and partner agencies, enhanced monitoring and reporting of compliance with permit conditions, and a risk-based response to non-compliance.

- *Annual Permissions Compliance Plan* - this annual plan outlines the activities, services and resources to be provided for the compliance management of permissions for the 2015-16 financial year. Actions have been designed to mitigate compliance risks, and cover education approaches, assisted self-regulation initiatives, and stronger mechanisms designed to coerce and enforce compliance.

As part of this work, the Authority will develop and implement a comprehensive set of Permissions Compliance Guidelines to provide guidance on how to manage permit non-compliance. Changes have already been implemented to ensure all alleged non-compliance is recorded and managed through the Compliance Management Information System. A training program on the permissions system and regulatory requirements has been developed and is being delivered throughout the agency and to partner agencies.

- Discussions are ongoing with the agency's Tourism Reef Advisory Committee to identify improvements and discuss new approaches to ensuring long-term infrastructure in the Marine Park is maintained to an appropriate standard and that adequate financial resources are available to remediate sites if required.

These initiatives will pave the way for an approach towards managing sustainable use of the Marine Park, through the delivery of an enhanced permissions assessment and decision system, the implementation of a compliance program based on risk and improvements to systems used to manage business processes associated with the permissions system.

Yours sincerely



Russell Reichelt
Chairman

3 August 2015

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