

The Wilderness Society

**Submission to the Senate Environment and Communications
Legislation Committee Inquiry in relation to The Great
Australian Bight Environment Protection Bill 2016**

January 2017

The Wilderness Society recognises that the Great Australian Bight is an Indigenous cultural domain and of enormous value to its Traditional Owners who retain living cultural, spiritual, social and economic connections to their homelands within the region on land and sea.





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Executive Summary

The Wilderness Society thanks the Committee for the opportunity to provide a submission on this Bill to protect the Great Australian Bight from environmental damage resulting from mining activities.

The Great Australian Bight is an extraordinary ocean and coastal environment of global conservation significance. It is a large, unique and pristine marine system. It is an important haven for whales, including the threatened southern right whale, and home to other marine wildlife such as the Australian sea lion, giant cuttlefish, dolphins, great white sharks and seabirds.

The extraordinary environmental values of the Great Australian Bight, and their ecological health, support significant industries in coastal and regional South Australia.

These values are threatened by current oil and gas exploration proposals from a range of companies that hold exploration permits in the region.

Community concern about, and increasingly public opposition to, oil and gas exploration and production in the region has grown considerably over the past 24 months.

The Wilderness Society considers that the case is now clear that the Great Australian Bight is not a safe or appropriate place for new oil and gas exploration or industrialisation. Indeed, late last year BP's own oil spill modelling results were finally published and clearly demonstrated the catastrophic risks posed by deepwater oil mining in this region and just how inappropriate this type of activity is in this environment.

The Wilderness Society notes that the Senate Standing Committee on Environment and Communications is also considering this important matter through its Inquiry on Oil and Gas Exploration and Production in the Great Australian Bight. As part of that Inquiry and its earlier iteration, the Wilderness Society has made substantial submissions relevant to this Committee's current Inquiry.

In line with those submissions, the Wilderness Society strongly supports the objectives of this Bill and considers that new laws to permanently and immediately protect the environment of the Great Australian Bight from all oil and gas exploration and production activities are urgently required.

We consider that there may be a number of legislated frameworks that could be used to achieve this objective, including that proposed by this Bill.

We recommend that this Committee:

- support the objectives of the Bill;
- explore and agree the best legislated framework to deliver those objectives; and
- recommend that existing petroleum exploration permits in the Great Australian Bight should be immediately suspended, consistent with the Bill's objective, during the Parliament's deliberations to develop new laws to permanently protect the environment of the Great Australian Bight from mining activities.

1. Oil and gas exploration and production activities are inconsistent with appropriate protection of the Bight

The Wilderness Society has recently made significant, detailed submissions to the Senate Standing Committee on Environment and Communications on this issue (dated April 2016 and October 2016 and attached). These submissions responded to the Terms of Reference for the two separate iterations of that Committee's Inquiries into Oil and Gas Exploration and Production in the Great Australian Bight. The Wilderness Society is pleased to submit both of these submissions to this Committee to inform its Inquiry on The Great Australian Bight Environment Protection Bill 2016.

These submissions outline in detail:

- (1) The extraordinary and pristine ecological values of the Great Australian Bight, including but not limited to the nationally protected species that would be unacceptably impacted by the operation of petroleum exploration and production activities in the Bight (including protected cetacean species) and placed at unacceptable risk in the event of an oil spill from exploration permit areas in the region;
- (2) The importance of South Australian and Commonwealth Marine Reserves in the Great Australian Bight, noting that oil spill modelling commissioned by the Wilderness Society and oil spill modelling findings much more recently released by BP demonstrate that these reserves (including sanctuary zones) are currently not protected from the catastrophic impacts of an oil spill were one to occur within the Bight Basin exploration permit areas;
- (3) The scale of impact that could arise from an oil spill in the Bight;
- (4) The important economic and social values that depend on the health of the Great Australian Bight marine and coastal ecosystems;
- (5) The unacceptable risks associated with oil drilling in the Bight, including the hostile physical characteristics of the Bight (water depths and wind, wave and current systems), the catastrophic impacts an oil spill could have in the region and the extreme difficulties associated with any attempts to contain or remediate any such spill;
- (6) The lack of a credible economic case for exploration in the frontier Bight Basin in the context of the extreme risks associated with exploration, noting that (a) there is no certainty that any find would be commercially viable, (b) any find, if commercially viable, could take multiple decades to assess before any move to production, and (c) the global carbon budget now means that new frontier fossil fuel basins can no longer be exploited under ratified Paris Climate Agreement targets; and
- (7) The existing regulatory regime is insufficiently transparent and robust to ensure that all unacceptable and foreseeable impacts will be avoided.

The Wilderness Society considers that the risk profile for deepwater drilling in the Great Australian Bight is unacceptable in the context of the existing and significant ecological, social and economic values of the region and that petroleum mining activities are entirely inappropriate in the region. The protection of the Bight's unique ecological values are inconsistent with petroleum exploration and production activities.

2. The need for new laws to protect the Great Australian Bight from oil and gas exploration and production activities, mining and industrialisation

As noted in our recent submissions to the Senate Standing Committee on Environment and Communications, community opposition to the fossil fuel industry's push to expand into the pristine wilderness of the Great Australian Bight has grown exponentially in recent times.

As information about oil industry activities and the unacceptable risks associated with BP's proposal slowly came to light, more and more people, communities, Councils and industry groups have raised serious concerns. South Australian coastal Councils, including the tourism icons of Kangaroo Island, Victor Harbor, Yankalilla and Yorke Peninsula, passed resolutions opposing BP's proposed activities in the Bight.

It must be stressed that community opposition to the oil and gas industry's intent to expand into the Great Australian Bight is not confined to BP's now-withdrawn drilling plans. There has now been ongoing community opposition to oil and gas exploration in coastal communities for many years, starting with the Kangaroo Island community's initial opposition to Bight Petroleum's seismic activity.

The pristine wilderness marine environment of the Bight is considered a completely inappropriate place for risky oil industry activity. It is our view that acreage should never have been released in these deep, rough and remote waters known for their treacherous weather and wave conditions.

We have recently seen a relatively high level of community debate and input into regulatory processes related to BP's plans to drill in the Bight. It is a shame that this community debate and contribution to policy making was not part of the government's decision-making regarding the original (and ongoing) *release* of mining exploration permits in the Bight Basin.

Serious concerns remain about the adequacy and appropriateness of the current regulatory framework for the regulation of offshore oil and gas development, the full and proper long term protection and recovery of matters of national environmental significance and the protection of the values of state and Commonwealth marine protected areas in the Great Australian Bight. Many of these concerns and regulatory shortcomings have now been highlighted by the risky drilling projects proposed in the Bight.

In the current context, we consider that new laws are urgently required to properly protect the Bight from any new petroleum exploration or production activities and that this would provide business certainty to those companies with current interests in the Bight Basin and, equally importantly, to those communities and existing business interests that rely on the health of the Bight and southern Australian coastlines.

3. Approaches to deliver appropriate legal protections

The Wilderness Society strongly supports the objectives of The Great Australian Bight Environment Protection Bill 2016 and in particular supports new legislation to permanently and fully protect the ecological values of the Great Australian Bight and the values of the marine reserves within it from the unavoidable risks and impacts associated with oil and gas mining. To date, we have not considered the potential impacts that may be associated with other mining activities that might be theoretically viable in the Bight in any great detail, however, we consider it likely that most extractive mining activities would result in significant impacts on the pristine and largely endemic marine values of the region.

We recognise that a number of regulatory approaches may exist to deliver this critical outcome.

3.1. Shortcomings of the EPBC Act and OPGGS Act and regulations.

The Wilderness Society has serious concerns regarding the adequacy and appropriateness of the current OPGGS Act and regulations to ensure the protection of the environmental values of the Great Australian Bight and the protection of its important state and Commonwealth marine reserves from the impacts and risks of deepwater oil exploration activities.

The Wilderness Society also has serious concerns regarding the ‘handover’ of EPBC Act assessment and approval powers (and thus responsibility for the protection and recovery of matters of national environmental significance as they may relate to offshore petroleum proposals) to NOPSEMA.

We have consistently detailed these concerns to the regulator (NOPSEMA) and in our submissions to the Inquiry into Oil and Gas Exploration and Production in the Great Australian Bight (please see attached submissions).

3.2. Shortcomings of the Commonwealth Marine Reserves Regulation

The National Representative System of Marine Protected Areas (NRSMPA) was introduced by the federal government for the conservation of marine ecosystems in Commonwealth waters. The objective of the NRSMPA was to establish a system of Marine Protected Areas (MPAs) to preserve the ecological viability of marine systems. This goal has guided the location and size of marine reserves, while seeking to minimise any socio-economic impact on those using the marine environment.

The present zoning and designation of marine reserves in accordance with Australian IUCN Reserve Management Principles and the Environment Protection and Biodiversity Act 1999 (Cth) (EPBC Act) identifies the activities permitted in the designated zones and the conditions and approvals required for such activities. The management plans for the CMRs are the primary tool for management of the reserves.

The former Management Plan for the GAB Marine Park allowed mining operations (other than in the Marine Mammal Protection Zone) only if they were consistent with protecting the conservation values of the Park. Any

proposed mining activity was subject to environmental assessment by the Director of National Parks and approval of the activity by the Governor-General. However, the General Approval issued in 2013 obviates the need for this assessment.

This framework however only considers the appropriateness (or otherwise) of activities proposed within a reserve's boundaries. New proposals to undertake frontier petroleum exploration in the Bight have highlighted the current limitations of the NRSMPA in relation to activities that present serious risks over a large geographic area (ie. oil spill risks) in that the exclusion or limitation of mining in special purpose and multiple use zones of MPAs does not mitigate the risk of an uncontrolled well blowout outside the zone boundaries directly impacting those protected habitats and marine national park zones.

The risks and impacts associated with offshore oil exploration and development are not confined to its particular location (eg. oil spill risks, seismic testing impacts) and the present marine reserves legislation does not take account of the inability to contain the environmental impact of an oil spill in a marine environment.

The credible risk and impacts of an uncontrolled oil spill from exploration and production is entirely contrary to protecting the conservation values of the GAB CMR. Locating the wells outside the boundaries of the GAB CMR does not mitigate the risk. Containment of an oil spill has many operational constraints within the GAB, principally due to weather and sea-state. It is accepted that containment and recovery operations in open water are generally not possible, as even a low swell and moderate winds can make booms ineffective .

3.3. Legislation to ban mining in the Great Australian Bight marine area

The Great Australian Bight Environment Protection Bill 2016 seeks to ban mining within the broadly defined Great Australian Bight marine area, between Cape Pasley, WA and Cape Carnot, SA. The area in respect of which the mining ban is applied is not defined by or limited to existing marine reserves.

In our previous submissions to the Inquiry into Oil and Gas Exploration and Production in the Great Australian Bight, the Wilderness Society made recommendations that the federal government ban oil and gas exploration and production in the Bight. As such, we strongly agree with and support the intent and objectives of this Bill.

The Wilderness Society considers that there are two additional issues that may need further consideration in the context of the Bill as proposed.

The first is the Bill's application to existing permits in the Bight. It is unclear whether and how the ban as proposed by the Bill would be applied to existing permits and titleholders in the relevant area. This presents significant overlap with recommendations before the Senate Standing Committee on Environment and Communications at present.

It is our view that in order to effect appropriate protection of the Great Australian Bight ecosystem values it is crucial that legislation banning oil and gas development in the Great Australian Bight marine area also apply to existing titleholders and that existing permits in the Bight Basin be rescinded.

The second is how the proposed Bill interacts with existing legislation. Any new legislation to ban mining in

the Great Australian Bight marine area, including this Bill, likely needs to be considered in the context of the National Representative System of Marine Protected Areas (NRSMPA) and the IUCN zoning of the South West Marine Reserves Network. The Bill as presently drafted would override the EPBC Act and the Offshore Petroleum and Greenhouse Gas Storage Act and render invalid any permit or approval of mining activity in the Great Australian Bight marine area issued under the existing legislation.

We note that the ban on mining in the Great Barrier Reef Marine Park, which provides an important precedent for such a ban, is also given effect within the relevant provisions EPBC Act and the marine reserves zoning system, in addition to the Great Barrier Reef Marine Park Act 1975 (Cth). The mining ban applies not only in the Great Barrier Reef Marine Park, but also the adjacent Coral Sea Commonwealth Marine Reserve which covers approximately 900,000 square kilometers, thereby protecting the inshore areas of the Great Barrier Reef Marine Park.

A mining ban in the Great Australian Bight marine area as provided in this Bill, may be appropriately supported by extending the oil and gas exclusion to all of the existing marine reserves in the South West Marine Network and expanding the special and multi purpose zones, with the oil and gas exclusion, beyond their existing boundaries or creating a new marine reserve. This would present a consistent approach to that used to protect the Great Barrier Reef Marine Park from similar mining risks.

4. Conclusion

In conclusion, the Wilderness Society strongly supports the policy objective of this Bill. We consider this to be an urgent policy need, given the catastrophic risks unsafe oil and petroleum mining activities present in the Great Australian Bight.

Despite BP's recent formal withdrawal of its recent proposals to undertake deepwater exploration drilling within its exploration permit areas in the region, a number of other companies with existing exploration interests in the Bight remain. Those companies' current work programs, which include seismic testing and deepwater drilling activities, if undertaken would present unacceptable risks to the extraordinary ecosystem values of the Great Australian Bight's pristine marine and coastal environments. These mining activities also present catastrophic risks to the economic and social values of southern Australian coastal regions, as demonstrated by BP's own worst case oil spill modelling findings.

The Wilderness Society notes that it remains critical that the federal government immediately suspend and ultimately rescind the existing exploration permits in the Great Australian Bight and recommends that the policy objectives of this Bill be supported by consistent protections under the NRSMPA.