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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir or Madam

Great Australian Bight Environment Protection Bill 2016

BP Developments Australia Pty Ltd (**BP**) makes the following submission to the Environment and Communications Legislation Committee's consideration of the aforementioned Bill (the **Bill**).

BP respectfully recommends that the Senate reject the Bill as it is based on two fundamentally incorrect assumptions which are:

- First, that the Australian legislative and regulatory system is inadequate in the Great Australian Bight (**GAB**); and
- Second, the Bill misapplies the intent of the network of Commonwealth Marine Reserves.

Once these incorrect assumptions are removed, the purpose of the Bill is redundant. On the other hand if these assumptions are accepted into law through the Bill, they risk substantially *degrading* environmental protections in Australia and departing from internationally recognised conservation practice.

For further information please contact Peter Metcalfe, Director – Upstream External Affairs at or

Yours faithfully,

BP

About BP

BP is one of the world's leading integrated oil and gas companies and delivers energy products and services that people around the world need. Our Upstream segment is responsible for oil and natural gas exploration, field development and production. Our Downstream segment is focused on the refining and marketing of fuels, lubricants and petrochemicals.

In Australia, our Upstream segment is a foundation participant in the North West Shelf Venture and in the Browse Basin, and operates exploration permits in the Carnarvon Basin off Western Australia. BP also operates four exploration permits in the Great Australian Bight (GAB), which are largely the subject of this Bill. In October 2016 BP announced that it had taken the decision not to progress this exploration and would work with government and community stakeholders to find alternative ways of honouring associated commitments and obligations. BP stressed that the decision was a result of a review of BP upstream strategy and the relative competitiveness of the project in its portfolio, and did not reflect a change in its view of the prospectivity of the region, or of the regulatory regime.

Notwithstanding the decision, BP believes it can offer significant insight to the Committee about the regulatory regime and the environmental acceptability of oil and gas operations in the GAB. At the time of making this submission, BP remains a Titleholder in these permits (EPP37, 38, 39 and 40).

Meanwhile our Australian Downstream segment manufactures products such as petrol, diesel, kerosene and autogas; uses ships, gas carriers, trains, pipelines and trucks to transport unrefined and refined products to and from our refinery and terminals, and to our customers; and we sell a wide range of products and services to retail and commercial customers from industries including maritime, aviation, racing and transport. In December 2016, BP announced a strategic partnership with Woolworths including the acquisition of Woolworths' existing 527 fuel and convenience sites, as well as an additional 16 sites currently under construction, and the development of a new fuel and convenience store and loyalty offer. The partnership remains subject to regulatory approvals.

Adequacy of the Australian legislative and regulatory system in the GAB

Australia's offshore petroleum regime has supported operations for many decades, in marine areas as diverse as the Bonaparte Basin off the Northern Territory; Browse and Carnarvon Basins off Western Australia, Otway and Bass Strait Basins off Victoria, as well as earlier exploration in the area defined by the Bill.

These operations have not only made substantial contributions to Australia's economy, they have done so in successful coexistence with the marine environment and other industries such as fishing, aquaculture and tourism. The environmental management of petroleum activities is managed under a number of statutes, but principally the

Environment Protection and Biodiversity Conservation (EPBC) Act and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations*. Since 2014, the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) has been the sole designated assessor under both regimes.

Australia utilises an "objectives based" regime to ensure safety and environmental management in the offshore petroleum industry. This places the onus on each company to substantiate what environmental management measures are appropriate for a particular activity, taking into account its specific nature and scale. This regime is widely considered to be superior to the alternative "prescriptive" approach, where the onus is placed on government to define minimum standards that must be achieved, potentially leading to a static 'one size fits all' and 'box ticking' approach.

In Australia, companies must demonstrate to NOPSEMA that they have reduced risks to pass a twin test appropriate to the nature and scale of the activity: that they are "as low as reasonably practicable" (ALARP) and that they are acceptable.

A consequence of this system (relevant to consideration of the Bill) is that the specific circumstances of the GAB are automatically hardwired into any regulatory assessment. The environmental attributes of the GAB, including the values of the Commonwealth Marine Reserves therein, must be detailed by any company seeking to conduct petroleum activities there, and the risks to the environment posed by that particular activity must be shown to be ALARP *and* acceptable before they can be accepted by NOPSEMA.

As a result, all of the attributes used to justify the Bill from the Explanatory Memorandum and the Second Reading Speech of its proponent are already appropriately captured and considered by the existing regulatory regime.

<u>Commonwealth Marine Reserves</u>

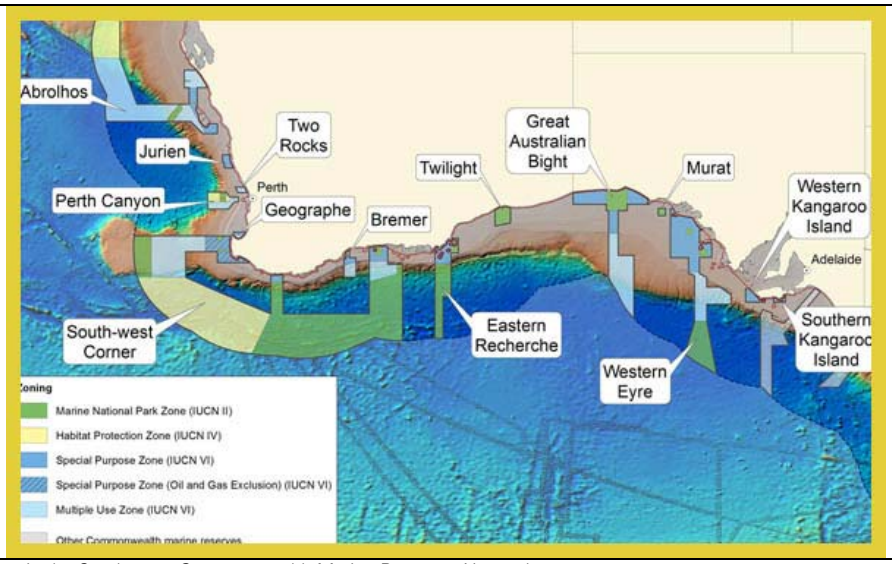
The Bill is also predicated on a second flawed assumption that, notwithstanding whether or not any risks have been managed such that they are ALARP and acceptable, activities should nonetheless be unilaterally banned due to the presence of a Commonwealth Marine Reserve in part of the area covered by the Bill. The proponent of the Bill asked at Second Reading, *"What is the point of having marine parks if they're not actually protected?"*

Part of the answer lies in the current regulatory regime, which ensures that the marine parks are in fact protected. As outlined above, the regulatory system requires companies to detail all of the environmental attributes of an area, including the values of any Commonwealth Marine Reserves, and demonstrate that they have met the ALARP and acceptability tests in relation to them.

But it is also important to contest the implication that there is no point to marine parks unless they are protected *in the form described in the Bill,* i.e. through unilateral

activity bans. Australia's system of Commonwealth Marine Reserves establishes a number of tiered zones of protection that are appropriate for the nature of the environmental values that are being protected within them. These zones are aligned with the internationally recognised system of classification of protected areas promulgated by the International Union for the Conservation of Nature (IUCN).

A map of the zoning scheme for the South-west Commonwealth Marine Reserves Network, which encompasses the GAB, is shown below, and further detail is attached as a an appendix.



Zoning in the South-west Commonwealth Marine Reserves Network.
Source www.environment.gov.au

Five different levels of protection, appropriate for the environmental attributes of the area in question, exist within this particular Network with varying implications for activities including shipping, defence, mining, tourism and fishing. Some zones do unilaterally ban mining activities including oil and gas, whilst others unilaterally ban certain types of fishing activity. Other zones do not unilaterally ban any activities, but do require them to face additional regulatory consideration against the defined values of the zone.

The exploration permits operated by BP partially overlap with a "Multiple Use Zone" (which permits oil and gas). This zone stands in juxtaposition with other zones including a "Special Purpose Zone (does not permit oil and gas) and a "Marine National Park Zone" (does not permit oil and gas). These latter two zones do not overlap BP's permits.

The Multiple Use Zone is aligned with the IUCN Protected Areas Category VI, which the IUCN describes as a "Protected area with sustainable use of natural resources".[1]

The Bill appears to propose there is no point to the intermediate level of protection afforded under the Multiple Use Zone of the Marine Reserves Network, because only

[1] *(https://www.iucn.org/theme/protected-areas/about/protected-areas-categories).*

those areas that ban activities unilaterally have any value. But as the map showing the South West Commonwealth Marine Reserves indicates, vast swathes of the marine area possess these intermediate protections.

The proposition that there is no point to such zones (if accepted into law as part of this Bill) would seriously undermine the basis for these zones and risk degrading the quality of environmental protection in the Commonwealth Marine Area. It would also mark a departure from the globally recognised principles of IUCN classification.

Instead, BP submits that the Senate should endorse the view that there is a point to all levels of the tiered zoning scheme; that scientific rigour should be the basis for determining zoning; and that activities should be allowed to proceed or not proceed according to the applicable zoning criteria.

A supplementary note on compensation (clause 7 of the Bill)

BP's recommendation is that the Senate rejects the Bill. However, in the event that the Senate, and subsequently the Parliament as a whole, passes the Bill into law we note the intention to provide compensation set out in Clause 7 of the Bill, which seems naturally just. However, previously the High Court has judged (*Cmwth vs WMC Resources 1998*) that exploration permits in that case would not be captured under the definition of acquisition of property and entitling compensation. Clause 7 of the Bill as written cannot therefore be relied upon by Senators to give effect to the need for compensation, and Senators may wish to consider amending the Bill to give a more robust legal effect to that intention before proceeding.

Australian Government
Director of National Parks

APPENDIX: zoning scheme for SW CMR network
www.environment.gov.au

IMPORTANT INFORMATION FOR MARINE USERS – TRANSITIONAL ARRANGEMENTS

Please note that this zoning scheme is not in effect. Until a management plan comes into effect, transitional arrangements apply. Transitional arrangements involve NO CHANGES ON THE WATER for marine users. Management arrangements in the former Great Australian Bight Marine Park (Commonwealth Waters) that existed prior to the establishment of new reserves continue to apply. More information is available at www.environment.gov.au/marinereserves

Overview of the zoning scheme for the South-west Commonwealth Marine Reserves Network

Activity type[a]	Special Purpose Zone (IUCN VI)	Special Purpose Zone (Oil and Gas Exclusion) (IUCN VI)	Multiple Use Zone (IUCN VI)	Habitat Protection Zone (IUCN IV)	Marine National Park Zone (IUCN II)
GENERAL USE					
Shipping (general transit)[b]	✓	✓	✓	✓	✓
Defence	✓	✓	✓	✓	✓
COMMERCIAL FISHING[c]					
Demersal trawl	×	×	×	×	×
Mid-water trawl	✓	✓	✓	✓	×
Demersal gillnet	✓	✓	×	×	×
Purse seine	✓	✓	✓	✓	×
Demersal longline	✓	✓	×	×	×
Pelagic longline	✓	✓	✓	✓	×
Minor line (dropline, handline)	✓	✓	✓	✓	×
Trolling	✓	✓	✓	✓	×
Crab trap	✓	✓	✓	×	×
Lobster pots	✓	✓	✓	×	×
Octopus trigger traps	✓	✓	✓	×	×
Hand collection	✓	✓	✓	✓	×
AQUACULTURE	✓	✓	✓	✓	×
COMMERCIAL TOURISM					
Non-fishing related tourism (including scuba/snorkel tours and nature watching)	✓	✓	✓	✓	✓
Fishing related tourism (including charter fishing and fishing/spear diving tours)	✓	✓	✓	✓	×
MINING[d] (including exploration, development and other activities)	✓	×	✓	×	×
RESEARCH	✓	✓	✓	✓	✓
INDIGENOUS ACTIVITIES Non-commercial Indigenous harvesting and hunting (consistent with the *Native Title Act 1993*)	✓	✓	✓	✓	✓
RECREATION					
Scuba diving and snorkelling	✓	✓	✓	✓	✓
Recreational fishing (including spear-fishing)[e]	✓	✓	✓	✓	×
Boating	✓	✓	✓	✓	✓

a. All activities require approval to be undertaken in Commonwealth Marine Reserves; approvals are provided in the management plan or through class approvals or individual permits.

b. Ballast water exchange is managed under national arrangements. Restrictions may apply in some areas.

c. Commercial fishing methods not listed in the table may require assessment.

d. Proposed mining operations carried out under usage rights that existed immediately before the declaration of a reserve do not require approval from the Director of National Parks.

e. Recreational fishing is managed by the states. South Australian or Western Australian rules and regulations (for example size and bag limits) will apply in the South-west Commonwealth Marine Reserves Network depending on the reserve location and unless otherwise specified in the management plan.