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SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION
COMMITTEE

**Environment Protection and Biodiversity Conservation Amendment
(Bioregional Plans) Bill 2011**

(Public)

FRIDAY, 13 MAY 2011

CANBERRA

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SENATE
ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Friday, 13 May 2011

Senators in attendance: Senators Boswell, Cameron, Colbeck, Fisher, McEwen and Siewert

Terms of reference for the inquiry:

To inquire into and report on:

Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011

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Evidence was taken via teleconference—

Committee met at 08:58

CHAIR (Senator Cameron): I declare open this public hearing of the Senate Standing Committee on Environment and Communications in relation to its inquiry into the Environment Protection and Biodiversity Conservation Amendment Bill 2011. The committee's proceedings today will follow the program as circulated. These are public hearings. The committee may also agree to request to have evidence heard in camera only if it determines that certain evidence should be heard in camera.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question the witness should state the ground upon which the objection is to be taken and the committee will determine whether it will insist on an answer having regard to the ground on which it is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

A witness called to answer a question for the first time should state their full name and the capacity in which they appear and witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. Mobile phones should be switched off. Dr Coghill, do you wish to make a brief opening statement before we go to questions?

Dr Coghill: Thank you very much for the invitation to appear before the committee. I see my evidence as being confined to the narrow question of the desirability of such instruments being disallowable by the parliament rather than simply being within the absolute discretion of the minister.

Senator COLBECK: Could you put on the record your perspective on that particular matter?

Dr Coghill: My clear perspective is that it is absolutely important to effective parliamentary democracy that the parliament have the opportunity to scrutinise and, if appropriate, disallow any action taken by the executive. It follows from that that I support the effect of the legislation as it seems to me that it would enable the parliament to scrutinise particular decisions by the relevant minister and, if after examination they felt so moved, to disallow such an instrument. My position is on that primary issue of accountability of the executive to the parliament.

Senator COLBECK: Your position is really a broader one than just this particular issue that we are dealing with here today? It goes to the desirability of the parliament, being the body that has the ultimate oversight of decisions of this nature?

Dr Coghill: Yes, I am seeking to apply a general principle to this particular legislation.

Senator COLBECK: There are circumstances under which that obviously does not occur and I think we are even considering some other legislation that changes that status. You would see it as desirable in as many circumstances as possible that the parliament should have the opportunity to provide ultimate oversight?

Dr Coghill: Yes, I see that as a very important principle for effective democracy and in my mind there are very few instances where the parliament should determine that that would not apply.

Senator COLBECK: Do you have any particular sense of in what circumstances it may not?

Dr Coghill: No, but I have not turned my mind to that in the context of this particular committee inquiry.

Senator McEWEN: I am curious as to why you think a bunch of, for example, senators would have the expertise to determine significant issues like the establishment of a marine bioregional plan. I have read your submission, which indicates to me that the science is quite complex. Are you putting your faith in a few senators?

Dr Coghill: I am sorry, I in fact did not put in a submission.

Senator McEWEN: You did not put in a submission?

Dr Coghill: No.

Senator McEWEN: I am confusing you with someone else.

Dr Coghill: But to come to the point that you are raising, my understanding of the process is that these matters would not arise except at the end of a very long process which did include extensive consultation with effective and interested people, an exhaustive scientific examination of the issues and reports ultimately to the minister by people who had very high levels of technical skill in relation to the scientific factors involved.

Senator McEWEN: You do not think that the politicians would just make a decision to allow or disallow a plan based on whether it would either secure them votes or lose them votes?

Dr Coghill: Senators in this case would have to make a judgement on the merits of the particular case, but I would hope that the consultative process was sufficiently thorough that it did lead to a recognition by all affected parties of what the issues were, what the importance was of providing protection of a particular marine species, and that by the time the minister had made a decision and that decision had come to parliamentary review there was already a very high level of consensus around what was the appropriate decision. But in the end these matters are subject to political authority and it is appropriate that the parliament is the final arbiter of the political decisions that have to be made to apply the scientific evidence.

Senator McEWEN: So, the important thing for you is the process leading up to whatever parliamentary process there is, whether that is a ministerial decision or a decision of a chamber of the parliament? Consultation is the key; is that right?

Dr Coghill: Consultation and scientific input are the key to it. I think there is now a lot of evidence, including the work of the Nobel Laureate Ostrom, who has looked at this very issue about how marine resources are managed and the role affected communities can play in that. There is very good evidence from her work and from other work that this can be a very effective way of arriving at the sorts of objectives the primary legislation sets out; that is, to ensure that there is conservation and preservation of marine species.

Senator McEWEN: I just have one last question, and if you have any comments on the process that is envisaged in this bill and the effect that will have on certainty within the stakeholder community please make them. Obviously significant decisions could be made by either parliamentary chamber and that could have an impact on for example fishers or other users of the marine protected areas. What do you say about that the issue of certainty, particularly for business interests in the area?

Dr Coghill: I feel that the really important issue there is the opportunity for the affected people to have an input into the decision. I think all of the evidence from places around the world is that where there is input or the opportunity for input by stakeholders they are likely to be much more satisfied with the result. The key really is the opportunity for input by the stakeholders. If the stakeholders then can be satisfied that they have had at the very least a reasonable opportunity for input, even if they do not agree with the final decision, they are likely to be accepting of the final decision. In those circumstances I think the level of uncertainty would be very greatly reduced.

CHAIR: Are you a former politician?

Dr Coghill: Yes, I am. I was a member of the Victorian parliament for 17 years and speaker there for four years.

CHAIR: This approach that you think parliament will take is an approach that I would summarise as being based on scientific knowledge and then operating on the best advice. Did the Victorian parliament in your time always behave in that way, that they acted in line with the scientific advice?

Dr Coghill: I think the relevant thing here is instances where there was the opportunity for disallowance of regulations or other instruments. In my experience that was an extremely rare event although the opportunity was commonly present. So, the actual behaviour of politicians by and large was not to take advantage of every partisan opportunity which presented itself but rather to be much more considered than that. It was really only in very rare cases that there was disallowance. In fact, I am struggling to remember any particular example, although I think there were a small number. It is not a matter that is of great concern to me.

CHAIR: I am surprised. In my experience—and I have only been here three years—I see lots of partisan approaches on issues. Let us take a theoretical parliament where an opposition says they are just determined to bring a government down and take every opportunity to do so. Why would you then expect an approach where everyone agrees, because you have some scientific advice and there has been consultation? How does that work? For the life of me, I cannot understand how that would work in a very partisan parliament.

Dr Coghill: When parliaments are extremely partisan, oppositions can take advantage of any and every opportunity. I certainly accept that. I think Australia is still very aware of the division that occurred in Australian society as a result of what happened in 1975. It is not as if that sort of atmosphere is without precedent. But here I think we are really talking about what would apply much more generally. I do not have great concern that in this particular instance it would endanger effective action to protect marine environments.

Senator SIEWERT: With all due respect, I do not believe that you can take politics out of this. You just have to look to see what the coalition—in this instance, it was the coalition—did over the Coral Sea. There are certain members of the Senate who have made it absolutely clear that they have strong concerns around—

Senator BOSWELL: Is that—

Senator SIEWERT: I did not name anybody. I am only speaking the truth. They have made it absolutely clear that they are very unhappy with the marine bioregional planning process, and tried to stop the Coral Sea process. I would put to you that that was on political grounds, because there is a large opposition from certain fishing interests to marine reserves. What you are now talking about is politicising this process that will undermine the science process. You are either looking at the effective science based decision making, which everybody says they want, and then they argue over the science. Then it will come into the parliament and it will just be a bunfight not over the science but over the politics.

Dr Coghill: I am sorry, I did not catch your name.

Senator SIEWERT: Rachel Siewert.

Dr Coghill: Yes, we have met. I do understand the point you are making. My concern is with the broader operation of parliamentary democracy. In the instance of protection of marine reserves, I think that it is enormously important that we have an effective, consultative process in which people do become aware of the risks that there are to the marine environment from the absence of protection from overfishing, pollution or other factors that may impact on it.

Senator SIEWERT: In terms of consultation, is it your concern that the bioregional planning process as it stands at the moment does not have adequate consultation?

Dr Coghill: That is something in fairness that I have not looked into. I have read the second reading speech, which is the only real knowledge that I have of that area, and on the basis of that I cannot really make a judgment.

Senator SIEWERT: You have made a strong point about consultation. If I understand you correctly, what you are saying is that the consultation process should happen through the political process in parliament. But what happens with the bioregional planning process is that there is a lot of consultation done at the front end.

Senator COLBECK: Allegedly.

Senator SIEWERT: Senator Colbeck has just said ‘allegedly’. I would be interested to know his thoughts, but he is not giving evidence at this time, on the process at the moment. Currently, as you are probably aware, the WA south west is in the process of consultation now.

Dr Coghill: Yes.

Senator SIEWERT: I would be interested to know your thoughts around that. I would have thought that was a less charged process through doing it before it comes into parliament in terms of the consultation process. What are your thoughts about the consultation process before it gets to ministerial decision making?

Dr Coghill: That is really what I meant in my earlier comment. Where there is highly interactive consultation with and between the stakeholders you are more likely to end up with a satisfactory regulatory regime—if I can put it in that terminology—than if it is left to a later stage and is simply left to be resolved at the political level. My point is that, if there is full and frank and proper consultation and exchange with and between stakeholders, it is much more likely that there will be an effective regime to protect the marine resource, and that is really what has been demonstrated by Ostrom in her work which has led to her Nobel Prize.

Senator COLBECK: In the context of that consultation process and your experience in relation to disallowance and use of disallowance, which is not an uncommon feature of our parliaments, would it be fair to say that, if there is no public outcry or there is little public outcry, potentially that has a determining impact on the willingness of political representatives to undertake a process such as a disallowance?

Dr Coghill: In my view, it would be much less likely that there would be a move for disallowance if there was an absence of controversy in the affected areas; in other words, controversy amongst the stakeholders in the area which was the subject of the legislative instrument.

Senator COLBECK: Disallowable instruments are a fairly common feature of a lot of our legislative processes. Most regulations that pass through the parliament in association with bills are disallowable. I do not recall a huge number of them being disallowed in my nine years here, but I would be interested in your experience over the time that you have spent in the Victorian parliament.

Dr Coghill: In my period in the Victorian parliament there were very few cases of disallowance. When I was first elected it required a resolution of both houses for something to be disallowed. That changed during the time that I was in the parliament, but I do not see that it made a huge difference to the number of instruments which were disallowed even though the Cain and Kirner governments did not have a majority in the upper house.

Senator SIEWERT: As to your comment about a public outcry, would it potentially be the case that if I as a stakeholder knew that I could go to either my local member or whoever and use the political process rather than bother engaging in dialog over the particular marine bioregional plan, if I wanted to undermine the process politically—and I am speaking from experience, because I have seen this happen all the time—I will just go to my local politician—

Senator BOSWELL: They are very good at doing that.

CHAIR: Senator Siewert has been very good and allowed you to ask questions without any interruptions. I will allow Senator Siewert to ask her questions with no interruptions.

Senator SIEWERT: Thank you. Would I not just go to my local politician or whoever was working on this issue and start using the political process rather than bother to engage in the consultation process?

Dr Coghill: Of course there is going to be the temptation to do that, and that makes it all the more important that the executive and its public service institute an effective style and level of consultation with and between stakeholders. That might mean slowing down the process rather than rushing to a decision that remains divided along partisan lines. Sometimes it does not really matter if it takes an extra six months or a year if you end up getting a better decision out of it and one which is acceptable, not necessarily in accordance with the ideals of individual stakeholders, but at least is accepted by them because they have had the opportunity to have their say. The evidence from Ostrom and from others suggests that where people have had an effective opportunity either personally or through their peers to be involved in making a decision they are much more likely to accept that decision than in cases where they have not been given a fair hearing.

Senator SIEWERT: I am not arguing around the issue of consultation. I agree with you that where people are included in decision making they have a much stronger sense of ownership over that decision making. My concern here is that, if they think there is another process they can go to go to get their way—and that is the political process—that undermines that consultation process. They could drag it out and drag it out because they know they can go and get it blocked in the parliament. Senator Cameron explained some of the political circumstances in which that could happen. My concern is about how the consultation process, which I very strongly believe in, could be undermined by these changes. In terms of regulations, yes, we do deal with a lot of regulations going through the chamber, but most of those regulations are to affect the operation of the legislation and are in fact not subject to consultation. In fact, we have had some pretty famous bunfights—

Senator COLBECK: Most legislation these days is founded on the regulations.

Senator SIEWERT: I read the lists of all the legislative instruments that go through the chamber. There is a lot there that you can guarantee has never been subject to consultation.

CHAIR: This is not a forum for you to have a debate. This is a forum to question Dr Coghill. It seems to me that there are no further questions, because we have degenerated into a debate. I ask senators not to degenerate into a debate between each other but to ask questions of Dr Coghill.

Senator BOSWELL: I think you make a very good point. Dr Coghill, you are a former parliamentarian. You obviously support the bill because you believe in parliamentary democracy.

Dr Coghill: Yes.

Senator BOSWELL: There is any amount of consultation that goes on, and I have seen in my experience here an attitude of, ‘You can consult as long as you like, but we are going to do it anyhow.’ This bill that Senator Colbeck is putting before the parliament, when everything else fails, does rely on parliamentary democracy to make the ultimate decision, and you would support that?

Dr Coghill: That is my principled stance.

Senator BOSWELL: It think it is a very good stance. We could degenerate into a citizens initiated referendum and all sorts of things if we do not believe in parliamentary democracy. I was interested in what you said. I was looking forward to reading a submission from you, but I do not think you have produced one.

Dr Coghill: I was not asked to provide one and have not done so.

Senator BOSWELL: You do not see any difficulty in the terms of the bill that Senator Colbeck has put forward?

Dr Coghill: The provisions of the bill are very simple, and I support the provisions of the bill.

CHAIR: I just want to go back to the issue of the operation of the parliament. You are dealing with it from an academic point of view when you quote the Nobel prize winning professor. What would happen under this theory if you had a hung parliament and you had a member of parliament who could bring the government down in an

area where, say, there was an argument that we should restrict fishing because it would destroy some native species. Because that MP has the power to bring down the government, what is to stop the government from destroying that species to maintain power?

Dr Coghill: For the legislation to be disallowed there would have to be majority support, of course. Obviously—and you would understand this—it is not a matter of an individual senator or a member of the House of Representatives having that power; it is them plus 50 per cent.

CHAIR: You are aware that, if that member is part of the dominant party who has the numbers and he convinces the party leader that you have to do this otherwise we will lose power at the next election, or I am not going to support the government in a no-confidence vote; how does that work?

Dr Coghill: In the particular instance that we are dealing with it seems to me that it is very important that the executive in developing instruments such as in this particular instance fully involves the affected stakeholders, and if that is done effectively the practical experience reported by—

CHAIR: I am sorry, you have made that point several times and I do not think anyone is arguing with that point. What we are arguing about now, and what we want to get your view on, is if there is an act of environmental vandalism by a government because they want to maintain power, how does that fit with your theory? How do you deal with those practical circumstances? I would say to you quite clearly that, if you look at where we are at the moment in terms of carbon pricing, we are nearly there at that position now.

Dr Coghill: I understand the point that you are making. My comments are related to this particular piece of legislation. I think what you are positing is that this legislation might be used to allow a particular marine species or marine environment to be severely degraded. Am I correct in that?

CHAIR: Not only degraded, but you could end up making a species extinct.

Dr Coghill: Extinct, yes.

CHAIR: For base political reasons.

Dr Coghill: I understand the point you are making. I still believe that it is a matter that should be open to the political process to determine these questions. In a hypothetical case such as you cite, ultimately the electorate might have to determine that matter at the following election.

CHAIR: I thank you for your time this morning, on behalf of the committee.

MACINTOSH, Mr Andrew Kerr, Associate Director, ANU College of Law

[09:30]

CHAIR: Welcome, Mr Macintosh. I note that you have not made a submission. Do you have a brief opening statement?

Mr Macintosh: I do not, no. The only thing I will say is that I understand the original bill was about making bioregional plans under the EPBC Act disallowable, and now there has been an amendment that is trying to make marine reserve proclamations disallowable. In relation to the bioregional plans, my understanding is that they are not legislative instruments, and from the current drafting I am not sure whether they will be able to give effect to what they are trying to achieve. They would have to make them non-legislative disallowable instruments under the Acts Interpretation Act. You might want to follow that up, I am not sure. In relation to marine reserves, I am a bit hazy on this, but my understanding is that because it is a proclamation and they are legislative instruments in relation to marine reserves they are already disallowable. But, again, I would have to follow that up and do a bit more research to make that 100 per cent clear.

Senator COLBECK: You are correct; there is an amendment that seeks to clarify the process that we have been through to get to this point. The intention is, and always was, to make the declaration of the zones disallowable. There was some misinterpretation in the drafting instructions of the original bill and so the amendment is designed to resolve that misinterpretation and bring it back to a circumstance where the declaration of the zones is a disallowable instrument.

Mr Macintosh: The second question there is the reserve—

Senator COLBECK: The reserve boundaries is a disallowable instrument. The reason I asked that the amendments be put up and I circulated that to the committee—I think it was two or three weeks ago--was so that it was clear. My intention was not to mislead anybody and to make sure that people actually did have an understanding of what the clear intent of the proposed legislation is. That is to provide the parliament with an oversight of this process. That is the pure intention of the process. At this stage, the declarations are purely in the hands of the minister, and my view and the view of some others was that there needed to be the capacity for the parliament to have some scrutiny of that process if there was a need to do so. That is the basis for where we sit at this point in time. As you would be aware, a range of instruments is disallowable under various acts of parliament. Provided there are opportunities for parliament to have scrutiny of that process, in my view this process, given the significance of its impacts—or potential significance of its impacts—deserves to have that scrutiny as well. I am interested in your perspective of that overall process.

Mr Macintosh: I can understand the position and the idea of the parliament having scrutiny of all sorts of legislative instruments I think is a generally good idea. The only issue that I would raise here is just making sure that it is firstly consistent across all types of reserves and similar things like National Heritage places, for example. Secondly, in relation to this, if there is going to be an emphasis on disallowance by parliament, there might be cause for minimising the amount of scrutiny of all opportunities for public participation. As I understand it, at the moment there are I think four opportunities for members of the public to comment—in relation to the bioregional plan, the areas of interest, during the socioeconomic process, and during the formal proclamation process by the director. It might be that that is excessive. There might be an understanding generated by that level of public participation that at the end when the government says there is going to be a marine park, there is going to be a marine park and the boundaries will be those boundaries set by the government. I am not saying necessarily do not allow parliament to disallow it. I am just saying there might be cause to make it very clear to all parties all the way through the process that this final instrument is subject to disallowance.

Senator COLBECK: I think that is a reasonable statement. I would not disagree with the fact that they should be made aware of that as part of the overall process. As to the current process, with our previous witness we had some discussion about the quality of consultation and the impact that might have on a parliamentary process that might succeed the public consultation process as you work through. That witness, someone with relatively significant parliamentary experience, indicated that the better the consultation process—and I hope I am not verballing him by saying this—through the initial phases, given proper consultation, the less likely there is to be some sort of activity within the parliament. That is not always going to be the case. I am happy to concede that. But this is about the concept of providing the parliament with oversight of a fairly significant decision. It has the potential to have a significant economic impact—obviously a significant environmental impact and a significant social impact. My perspective is that it is reasonable in this circumstance that the parliament have that opportunity

for oversight. It is based around the consultation processes as well that precedes it. I am not suggesting that any of those should be diminished by this particular piece of legislation.

Mr Macintosh: I suppose the other thing it gets into is the compensational or the government assistance processes that run alongside the declaration process and the need for those processes to provide certainty from the beginning so when you are doing marine boundaries or reserve boundaries of any nature the government makes it very clear from the outset what the compensation is going to be and they work out both the boundaries and the compensation package at the same time, so that you avoid the instances where you get to the marine boundary or reserve boundary process and the people are concerned about what the impacts are and do not know what the compensation package is going to be that is going to accompany the declaration.

Senator COLBECK: I would agree with you on that particular point. I have some concerns about the current process, where the package for displacement was announced the day before the proposed boundaries and after only one meeting of a committee that was designed to help design that displacement package. One of the concerns that I already have about this process is lack of consultation about one of those key/critical factors that you have just described and which specifically excludes all shore based impacts of the declaration. We will hear some evidence about that later. You have actually described one of the elements that I already have some concerns about within the current process and why I think it is reasonable that the parliament does have some oversight at the end. Had those issues been dealt with in a reasonable manner, my concerns about this may not exist.

Senator BOSWELL: So, what you are actually saying is that the displacement policy and the socioeconomic assessment should be made before the boundaries are declared; is that right?

Mr Macintosh: They should be made in tandem so that we know where the boundaries are going to lie. While they are working out the boundaries and deciding where they are going to go they are also giving a clear indication of what the compensation package or government assistance package is going to be that accompanies the declaration of the reserve.

Senator BOSWELL: I interpret that as saying that the buyouts must take place before the declaration, before the closures?

Mr Macintosh: I am just saying they should work in tandem so that when you get to the end of the process stakeholders are aware of the type of package that is going to accompany the proclamation of a reserve. It does not have to be the full details of it, but there has to be a clear indication to all stakeholders of the nature of the compensation that they are going to get when the park is finally declared.

Senator BOSWELL: Did you have a look at the displacement policy?

Mr Macintosh: Yes, I did.

Senator BOSWELL: It is exactly the same as our displacement policy. It can be interpreted that we pay nothing or we pay a fortune and anything in between.

Senator SIEWERT: When you said 'your displacement policy', do you mean the one that was under the Howard government?

Senator BOSWELL: Yes.

Senator SIEWERT: I thought that should be clear.

Senator BOSWELL: Yes, that is exactly right. On the Great Barrier Reef we paid out \$230 million. There are no specific terms that say if you take X number of boats out you have to pay them this. It is really very loose and can be interpreted in almost any manner you want. Do you have any comment on the displacement policy?

Mr Macintosh: I would agree that the way it is currently drafted it could result in nothing all the way through to an enormous amount of money. My preference would have been for something that provides greater certainty to all parties about when compensation is going to be paid and the amounts that are going to be paid.

Senator BOSWELL: How do you interpret the policy of paying out? When does it occur? Does it occur when marine parks are closed and 16 or 18 boats are kicked out? Then they have to come up and say, 'I want X'? How do you see it working?

Mr Macintosh: I am not sure. I think we are going to have to wait to see. That is the nature of the policy. It is wholly discretionary and we have not been given a clear indication of when compensation is going to be paid or the nature of the compensation that is going to accompany marine park declarations. It might be that the Commonwealth at a later date will give a clear indication and everything could be absolutely fine, but with the way that it stands we just do not know.

Senator BOSWELL: Do you basically support Senator Colbeck's bill?

Mr Macintosh: As I said at the beginning, at the moment I am somewhat hazy about whether the proclamation making a marine park is already disallowable. I would have to do a little more research to make that clear. I cannot really give you a clear answer as to whether or not I support the bill. It might not be necessary, I am not sure.

Senator BOSWELL: I think you can take it from us that it is necessary. We have put the legislation up and then we were told we had to amend it. Then there were some concessions made in the parliament that they did not do it the right way and it had to be further expanded but let us assume—

Mr Macintosh: If that is the case, again, I would probably qualify my answer by saying that I think probably additional thought should be given to make sure that this is consistent across-the-board. So, if a proclamation for a reserve is disallowable it is disallowable for all types of reserves, not just marine reserves, and also give some thought to ensure consistency that things like National Heritage places are also disallowable or not disallowable depending on what the outcome is.

Senator COLBECK: You are making a more broad comment about the declarations throughout the act rather than just the specifics of what we are talking about in this instance?

Mr Macintosh: That is right. I am just trying to make sure that we treat all of them the same so we do not end up with anomalies like that it is just marine parks, for example.

Senator SIEWERT: I have huge concerns about elements of this bill and the comments that you have just made, because then surely you are making it a very strongly political process. You can chuck scientific evidence out the window to a certain extent and you can chuck the heritage advice out the window, because then it comes down to a bunfight on the floor of the Senate. We are the Senate so let us use the Senate as an example.

Mr Macintosh: My response would be that it is already a bunfight. It is already a political process. Ideally in relation to heritage process—and I have said this ad nauseam—I would prefer it to be an expert process and once the expert panel decides that it has got relevant heritage values that it be put on the list. In those circumstances I would say that it should not be a disallowable instrument.

Senator SIEWERT: For heritage?

Mr Macintosh: This is for heritage. For things like marine parks, it is already a political process. It is inherently a political process and, as a result, I suppose you have to raise the question, is it only the government's politics that matter or should the parliament have a say? You could actually construct the argument that it is reasonably valid that parliament be able to disallow these sorts of instruments.

Senator SIEWERT: I understand where you are coming from. A couple of years ago I disallowed their abatement plan for dieback, because it was pretty bad. Sorry, I did not disallow it, I moved a motion which was supported and it disallowed the dieback through the abatement plan. There had been inadequate consultation and it was a poor plan. The department has let it drop now. It has chucked a sook and let it drop. That is my version.

CHAIR: 'Chucked a sook'; is that a technical term?

Senator SIEWERT: A technical term. Regardless of the fact—

CHAIR: I am sure they are listening too.

Senator SIEWERT: I am pretty certain they would know my opinion already. They say they are now doing consultation and so on. A couple of years down the track we still do not have a proper abatement plan. My point is that it is a blunt instrument for trying to get change in the legislative process. This then means you cannot come back with another one for six months, and there is no ability for the parliament to get into a process of trying to make amendments, which is why the disallowable instrument process is quite a blunt instrument.

Mr Macintosh: I agree with that completely. As I said before, you have problems with creating this quite long consultation process and have several stages of consultation. The government also goes through its socioeconomic process. Is it then a complete waste of time if it can be donked on the head right at the end? Again, that is what I raised before, there are arguments both ways. I would probably like to give more thought as to exactly where I lie, because I think it is a very difficult one. It is hard to construct an argument to stop parliament having a voice in any process. My predilection is to think that giving parliament a power to block something, or a veto power in these circumstances is the right thing. That is my predisposition. I am not saying I would necessarily find that at the end, because I think those other factors also have to be considered and they are just the ones that you are raising.

CHAIR: There must be some reason why a range of legislative instruments is not subject to disallowance? It just did not happen that people said, 'We just will not allow disallowance.' There must have been a debate and a reasoning as to why certain instruments should not be disallowable. Are you aware of that?

Mr Macintosh: I was not involved in the debates in 1998 or 1999 so I cannot really give you an opinion about why certain things were and were not. I cannot really help you on the nature of that debate. But I agree with you that you would hope that somebody would have given some thought to deciding why they were going to make some things expressly disallowable and others not.

CHAIR: The discussion we had with the previous witness was that you could have, say, a hung parliament and a lobby group on any issue in an important seat makes that individual MP basically the determinant of whether you have an environmental protection based on science or a disallowance of that environmental protection based on politics. How do you deal with that?

Mr Macintosh: Almost very similarly to the way I responded to Senator Siewert, that is, I think these processes are inherently political. They are not necessarily based on science. In the end it is politics which determines where the lines are drawn. I do not think that is a bad thing. What we see when the lines are drawn is an expression of democratic process. In some cases I would argue that too much weight is given to one party and not to the other and that the views that are represented in drawing lines are not representative of broader community views. But that is the nature of democracy. It is not perfect.

CHAIR: It is certainly not perfect. If the imperfect democracy means that we destroy a species is that okay?

Mr Macintosh: I would say it is not okay; that is my moral position. What is the alternative?

CHAIR: The alternative is that there are legislative processes that allow you to protect endangered species.

Mr Macintosh: From my view, I would say that would be fantastic if we were going to have legislative processes that prohibited species going extinct. Already we allow species to go extinct almost every day. This is only about one particular process. The question I suppose that is being posed here today is: do we want to make sure that this single process is not subject to a disallowance in parliament as opposed to a whole bunch of other decisions? For example, in the approvals process for a particular project, let us say in the EPBC ACT, what would happen if the minister was going to make a decision that allowed a species to go extinct? Should that approval decision be subject to disallowance as well?

CHAIR: There has been a longstanding approach on this. The minister has certain discretions and certain obligations. Have you had a look at the minister's power and discretion?

Mr Macintosh: I am not 100 per cent sure about where I lie on whether or not this is a good idea, but certainly there are some decisions that are disallowed and others are not. That does not necessarily mean that the current allocation of those decisions is necessarily right.

CHAIR: We have had the argument and we have got into consultation. I suppose consultation is in the eye of the beholder to some extent. Section 176 of the act says that the minister must carry out public consultation on a draft of the plan. Would you have any problems with that?

Mr Macintosh: Not at all. What I said before is that I think public participation and opportunities to comment are a good thing, but if we are going to have a power for parliament to knock it on the head after a very extensive process there might be grounds for shrinking the amount of public consultation simply to make sure that we do not waste a lot of money on consultation that actually ends up being obsolete because it is subject to disallowance.

CHAIR: It says here that if you are doing a bioregional plan the minister, if you are dealing with a state or a territory, has to look at important economic and social values. Is that not that balance between the environment and the economics, that you have to look at these things?

Mr Macintosh: Yes, and I suppose the important thing about bioregional planning is really when those are made into legislative instruments by section 37A, if they are going to be used to approve particulars; in those circumstances—correct me if I am wrong—I think they are then subject to disallowance. You make the bioregional plans into legislative instruments by making approval decisions through those bioregional plans, and then those plans become subject to disallowance. Again, I would have to check it up but from memory that is—

Senator BOSWELL: If you disallow a plan, the plan then—because I thought of doing this—just goes back to the department to administer without a plan.

Senator COLBECK: You—

Senator BOSWELL: The guts of this bill as it stands now is one person, just one person.

CHAIR: Is this a question?

Senator BOSWELL: It is a question as to whether the witness agrees that one person, the minister, could draw up and make a plan and declare the boundaries—one person only, with a tick and a flick that becomes law? Not even the parliament and not even his own party. Some might argue he would not do it, but that is what you

can do. The minister is all powerful, has no parliamentary scrutiny and can make a decision unilaterally. I do not think that is in the best interests of democracy. I am asking whether you would agree with that?

Mr Macintosh: I do not have anything to add to what I said before. I think there are arguments both ways.

Senator McEWEN: Are you familiar with the Hawke review of the EPBC Act?

Mr Macintosh: Yes.

Senator McEWEN: The issue of ministerial discretion and decision making and various aspects of the act was a significant part of the discussion in the review. Can you elaborate on what Hawke said about ministerial discretion and what could be done to improve public confidence in that? Also, do you know whether Hawke mentioned anything about increasing the number of instruments under the act that should be disallowable by the parliament?

Mr Macintosh: Not off the top of my head. I know there are certain parts of it. I know, for example, in a discussion of National Heritage places that Dr Hawke concluded that it was not necessary for National Heritage places to be made by an independent body like the Australian Heritage Council, because in his opinion that final decision was about resource allocation. I strongly disagree with that position, because listing decisions are not about resource allocations. That is the approval process. Other than that I cannot remember whether Dr Hawke considered the process we are actually discussing today, about declaring marine areas or terrestrial reserves.

Senator McEWEN: No, I cannot recall that either. Given that was a significant independent review of the act and its operation and public confidence in decision making under the act, it might be worth ascertaining whether or not Dr Hawke made any comments.

CHAIR: Thank you for your evidence today. It has been helpful and we appreciate your taking the time to come and assist.

DIGGLES, Dr Ben, Private capacity

[09:55]

CHAIR: Welcome, Dr Diggles. We understand you have had some travails getting to Canberra, but thank you for coming along to talk to us today. The committee has received your submission as submission 27. Do you wish to make any amendments or alterations to your submission?

Dr Diggles: No.

CHAIR: Do you wish to make a brief opening statement before we go to questions?

Dr Diggles: Yes. I thank the committee for inviting me here today. I have provided a fairly detailed submission and I hope that everyone has had time to read it. If not, I am here to clarify any points or questions that you may have. By way of background, I am a marine biologist. I specialise in the field of aquatic animal health. I run a small business. I provide consulting services for governments, fisheries and aquaculture industries throughout Australasia. As some of you may be aware, environmental health and biosecurity—the areas I work on—are two critical factors that underpin the productivity of fisheries and aquaculture. There are actually several international agreements that require us to take these things very seriously. These are the sorts of topics I usually work on professionally. We usually use the science side of it to evaluate issues related to biosecurity and environmental impact. The science is called risk analysis.

Marine parks are supposed to be all about environmental health as well, because healthy ecosystems are resilient. They are filled with healthy animals and they generally have high biodiversity. But marine park planning in Australia seems to focus mainly on area management, not necessarily risk analysis or risk management.

I became involved in these marine park issues when I was asked to evaluate some of the science used by the federal government to justify declaration of the Coral Sea Conservation Zone. But as a private citizen I am also greatly concerned about what is happening in my local marine park where I live in Moreton Bay in South East Queensland. As a professional, I work on the actual mechanisms that influence the resilience and the biodiversity within these aquatic systems. I work on the actual nuts and bolts that hold the systems together. But it is apparent to me that there is actually a disconnect between the reality of the biological processes that are threatening the biodiversity and the fish stocks in these areas in my local marine park; there is a disconnect between that and the area management tools that many laypeople, politicians and even some scientists seem to think can solve all the problems.

It is apparent by the actions, for example, of the Queensland government that they seem to genuinely believe that expanding the marine parks and fishing closures will actually solve complex environmental problems. To complicate matters further, we have green groups who are actually spreading misleading information via the media and they are paying for some very questionable science that is being trotted out supporting a view that everything will be okay as long as we have marine parks and they make the fishing closures as big as possible.

The reality is I think marine parks are being massively oversold in Australia at the moment. It is my aim today to give the committee and the federal government a clearer view of what the parks can and cannot do for biodiversity, fisheries and the health of the marine environment, and to explain why I think the actual process needs a few more checks and balances to make sure it is done right.

CHAIR: My understanding of what you have just said is that there is a disconnect between reality out there and what the politicians understand?

Dr Diggles: Yes, the problem is that everyone is trying to simplify these things to a point where it becomes misleading as to what the actual problems are in many of the areas that we are trying to manage. That is inherent with people's various levels of understanding of the actual processes involved.

CHAIR: We have had evidence previously that basically you should let democracy take its course and you should simply let the parliament determine these issues, because that is democracy. If you are saying that the parliament does not understand the issues, you would not support that, would you?

Dr Diggles: I think both sides of the issues should be firstly presented and fully understood before the final decisions are made.

CHAIR: Given that we are dealing with this bill now, this simply provides for a disallowance approach. You have indicated that basically parliament and parliamentarians are not qualified to be making these decisions in the interests of the marine park or the environment, so why would you be supporting this bill?

Dr Diggles: I never said anything about their qualifications. I commented on the information that is available for them. There is a chance that the process, with the way it is going at the moment, could go to such an extent that it may be better to have a disallowance, re-form and get the process right. The main thing is to get the process right with the best outcomes for the environment and the balance between the socioeconomic benefits and environmental protection.

CHAIR: I am struggling to come to grips with the submission you just made that parliamentarians are not qualified to make these decisions and yet they should be given the right to disallow. Let us say, theoretically, that you provided evidence, and said, 'This is what is going to happen' and the government adopted that, which in your view was in the best interest of what was needed for the environment, would you then support a disallowance of something that you had put forward?

Dr Diggles: My position is based on a science, and it is to make sure that the parliament has the correct information on which to make the decision and to make that through a democratic process. The process itself is not a scientific process. As was pointed out by the previous speaker, it is a political process.

CHAIR: This change does not make it a scientific process, does it?

Dr Diggles: It has the opportunity to revise the situation if, indeed, it goes off the rails so far that—

CHAIR: Who would revise it? The people that would be revising it are these people that you say are not in touch with the reality that is out there.

Dr Diggles: What I am saying is that there are other scientific views that are based on the reality, the facts of what is actually happening in marine parks at the moment in the country, and that these issues need to be fully processed when we are looking at the wider bioregional planning.

CHAIR: So, these people who have a disconnect between reality, as you have said, should be given the power to veto the reality? Is that what you are saying?

Dr Diggles: Perhaps I should give an example based on one of the examples in my submission. I can walk you through so that you understand what I am talking about with respect to what the Queensland government, in this case, considers to be an appropriate way of managing an ecosystem, which is a marine park next to where I live, and the reality of the processes that are degrading that park.

CHAIR: I am asking about a practical position. You are saying that there is a disconnect between the capacity of politicians to understand the reality that is going on out there, but you are coming here and saying that the politicians should have the right to veto.

Dr Diggles: You are incorrect. I have not discussed any ability of parliamentarians to go any which way. I am saying that they should be properly informed. There is a disconnect between the management processes, which are the outcomes—the lines on the water—and the actual biological processes in some of these areas. It is more about making sure that the parliamentarians are better informed. I am not talking about their decision-making capabilities. They are all very capable people. We are talking about the information on which they base their decisions. If people do not see both sides of the story and they do not get the full understanding of the ramifications of the process they are going down, even very good decision makers can make the wrong decision, because the information is not fully balanced.

CHAIR: Senator Boswell.

Senator BOSWELL: You are an expert on marine parks. In your opening statement you alluded to the fact that just because you put a marine park down and declare the boundaries that does not have the desired effect on the fish stocks or the degradation of the zone. Could you explain to us, because you are one of the few experts that we will have with us, by declaring an area a national park, why does that not work? Can you give us specific examples that we can put on the record?

Dr Diggles: Area management is managing people's activities within an area, but it is not risk management. These biological processes do not particularly care about where the line is put on the water. They work on processes related to things like water quality, nutrient input and all of these other aspects. A lot of the insults to the system, for want of a better word, actually originate from outside the lines on the map. It is very important to realise with this process that we are seeing some people quite happy to put lines on a map and to state that this ecosystem is now protected. They use that word in a way that is very misleading, because the actual risk associated with that ecosystem may be originating from outside the lines on the map and, therefore, a more holistic ecosystem approach is needed.

Senator BOSWELL: How would you protect a specific species or a specific area if you do not use marine parks?

Dr Diggles: We actually use a risk based approach to the management. In my submission, I used an example of Chesapeake Bay in the United States, which is an important nursery area for the fisheries, but it is also subject to a large amount of anthropogenic impacts from the large amount of people who are living around that area. These people do not go and declare a marine park in Chesapeake Bay to stop the fishing and say, 'That will fix everything up', because they actually know that is not the case. They work on using fisheries management as one component of a broader ecosystem management. They talk about reducing nutrients into the water. They talk about addressing the risks to the actual ecosystem. Sometimes in a situation where the fisheries are well managed it does not pose a risk to ecosystem processes. There are various components to proper ecosystem management and in many cases area management is not necessarily the best way to go.

Senator BOSWELL: Are you talking about bag limits? What other ways are there?

Dr Diggles: There is a whole range of things. My submission went through a case study, for example, in the Moreton Bay Marine Park, which is an area near where I live. All of the oysters are dying from the bottom up. One hundred years ago this whole ecosystem was basically structured around oysters. They grew from the middle of the high tide mark half way up the intertidal zone, all the way down to 12 feet below the low tide mark. That was a natural system. The oysters functioned by grabbing phytoplankton, feeding on that, turning that into oyster shells and animal material in the oyster itself and the spawn from the oyster, and that is what drove that ecosystem. It fed the fish and provided habitat for the fish through the oyster reef. That was then, but now we have a situation where the water quality has declined to such a point that we have a disease process killing off the oysters from the bottom up—and I put in a photograph to show that. There is a disease process due to the immune system of the oyster being compromised by the poor water quality.

Senator BOSWELL: Have you had a look at the maps of the south west zone?

Dr Diggles: Yes.

Senator BOSWELL: What does the big green zone that is in the south west corner actually protect? It is the highest protected area in a marine national park. By putting a big zone out there, what does it do?

Dr Diggles: That one big zone in the south west was declared last week.

Senator BOSWELL: Yes.

Dr Diggles: The draft plan was put out for discussion.

Senator BOSWELL: Yes.

Dr Diggles: Again, there are pros and cons for most of the areas, but your eyes are definitely drawn to that large area. It is a quarter of a million square kilometres at the moment they have slated as ICUN category II, which is declared as no fishing at all.

Senator BOSWELL: That is right.

Dr Diggles: The definition of category II for ICUN protected area management states, 'National park protected area managed mainly for ecosystem protection and recreation.' At this stage that park seems to be doing very little from the point of protecting that ecosystem from identified threats or risks to that ecosystem. It depends entirely on what the government is considering are the risks, I assume, if we are looking at it from a scientific perspective, or it may be put in there purely to cover an agreement with some user group where we need a certain percentage of area closed to fishing. I am not sure why it is there, but it is very hard to justify that on a scientific basis.

CHAIR: We will need to move on. Senator Siewert.

Senator SIEWERT: Have you had a look at the scientific data and the various inputs that the government has used to make that zoning recommendation?

Dr Diggles: Yes. In fact, I have had a look at the information that they have there. There is a lot of very good information that has been gathered over a number of years, but it is not a risk based approach to the management decision based on the information; it is not based on actual risks to the area itself. The area has whales. I assume it has pelagic fish stocks. There will be benthic fauna on the bottom and fish as well, and there are sea mounts and other geographic features in the area, but we need to look at what are the actual threats to that area and why it is planned, at the moment, that there is such a large full no-take zone there. For example, if the government wishes to protect the bottom dwelling fish, that is possible. That does not mean that you have to stop people from trolling for surface fish that move through that area, for example. If you are worried about the benthic fauna sitting on the bottom and worrying about a trawler coming through and ripping it up, if that is the main key threatening process that the government is worried about, then you should prevent trawling from the area, but there is no real reason to prevent other forms of line fishing if you are worried about the habitat.

If you are worried about whales or maybe their perhaps getting caught up in a purse seine, firstly, I understand there are some pilchards caught there and there is commercial fishing, of which I am not fully aware, in the area. Firstly, it is probably a bit offensive to the commercial fisherman to suggest that they might catch a whale in their purse seine. There is hardly any evidence to suggest that there are interactions with marine mammals with the fishing gear out there. Secondly, why do we have this area which is a full no-take zone at the moment and not allowing something that is entirely in keeping with the ICUN II management arrangement, which is a catch and release recreational fishery? If we are worried about bottom fish, then we can stop fishing for bottom fish. But we have pelagic fish moving through. At the moment the government is basically saying, 'We're going to ignore the potential socioeconomic benefits for the fact that we just purely need to have a huge ICUN II area in this zone and we're going to ignore the fact that we could have a perfectly sustainable catch and release fishery or a no-take fishery where you still allow the recreational anglers out there to catch pelagic fish by trolling.' It is very easy to tell whether a person is trolling in a recreational boat, as opposed to a commercial purse seiner or a long-liner. They are very different activities and the gear is completely different. None of it interacts with the marine mammals out there. To me it seems a bit of a worry when, especially in the category for ICUN II, it specifically states, 'Protected area mainly for ecosystem protection and recreation.' We have a recreational fishing activity that is completely aligned with the intent of the ICUN guidelines for the area and it is being ignored. These are the sorts of issues that make one think whether these areas are being based on science or whether they are being based on other philosophies.

Senator SIEWERT: Is it your argument that there should not be any no-take zones or sanctuaries and that it should all be risk based management?

Dr Diggles: No. My argument is that the government is making a decision on how to manage this particular area and we need to know whether this is based on science or whether it is based on a philosophy.

Senator SIEWERT: This is a general question.

Dr Diggles: If we are basing it on science for that particular area, the science would now show, for example, that we do not need to ban catch and release recreational fishing, because it poses no threat to any of the animals that are out there in the zone. However, in other parts of Australia we may indeed find that there may be a certain area where it is so fragile and so important, from an ecological perspective, that no-one should be allowed in there and that it should be ICUN Ia category, set aside primarily for scientific research as a reference site. The government has the tools available through the planning process based on the ICUN criteria, but it is whether the government has both sides of the argument with regards to the possibility for the different activities in these areas; that is the area that I am worried about.

Senator SIEWERT: I wanted to clarify what you were saying about Moreton Bay. The way you could interpret your argument is that you solely base your processes around risk management. I have never heard anyone say that you should just use area based management without looking at the risk management as well, because it is a combination of the above. I would like an understanding of where you are coming from with that issue.

Dr Diggles: For example, Moreton Bay is very similar and has a lot of parallels to Chesapeake Bay in that we have a level of human impact on the water quality, the sediment loading and the other things going into the system, that basically overwhelms any other impacts in the whole area. The whole ecosystem structure is changed.

Senator SIEWERT: I understand your argument.

Dr Diggles: Therefore, the area management is impotent, because the water moves across the lines and the actual ecosystem system processes are what is driving the ecology of the area, the decline of the area and the reduction of biodiversity in the area. It is understanding the fact that we have these processes involved that cannot be managed by the line on the map.

Senator SIEWERT: As I said, I have not heard anybody argue that just area based management is going to fix everything, but that you need a management process as well and you need to manage your risks. There is a lot of marine environments, particularly those close to the shore, for example, where you are talking about run-off sediment and so on. Surely the combination of the two, where you particularly allow an area to recover once you are managing the threats would be an effective management system?

Dr Diggles: It depends, because there are a lot of people talking in generalisations across the whole country. Australia is a huge country and they are trying to take data from, say, the Great Barrier Reef and apply it to somewhere with a completely different system. Each individual system will have its own suite of risks involved, and in my submission there is nowhere where I said the whole idea of bioregional planning is a failure. I did not

say that at all. I have said that we just need to get the process right and there are other things that need to be considered that can be expressed in the decisions made about the size of the zones, the types of zones being used and the types of activities that are allowed in those zones. These are the things we are all discussing, but we need to keep in mind that in Queensland, for example, we have the minister for the environment coming out and saying that the marine life is thriving in the green zones in Moreton Bay, and using the example of crabs, which are already very well managed from the fishery perspective with a very conservative management arrangement, which means that the productivity of crabs is already maximised based on the environmental quality of Moreton Bay. The fact that we have governments putting these statements out indicates to me that they are not fully aware of these issues that I am talking about.

CHAIR: Senator Colbeck.

Senator COLBECK: I would like to follow on from where Senator Siewert left off. Again, I think it was reflected in some evidence you gave to Senator Boswell. In your view, does the declaration of these zones create a perception within the community that everything is all okay in that patch and we do not have to worry about it so much anymore? Is that one of the concerns that you have about this process, that everyone feels warm and fuzzy that there is a zone created there and everything is sweet, and yet there is a whole range of other factors that need to be considered or implemented as part of that process to ensure that you get the effect that you are really looking for rather than the effect of the created expectation?

Dr Diggles: Indeed, that is the one real risk involved with the entire process. It is the fact that people in the cities will be thinking that everything is okay, we have our green zones now so we do not have to worry about that, when in reality it can actually make things worse. If people are not fully informed, if we are using such a simplistic argument to sell these, and as I said oversell the potential benefits, not necessarily actual benefits—these are hypothetical benefits in a lot of instances which are trying to be sold—they need to be weighed up with the potential costs involved with the implementation. One of the potential costs is that people will think that everything is okay when in fact it is definitely not.

Senator COLBECK: Senator Boswell mentioned the large category II zone off the south west in the published proposed boundaries. In the context of, say, pelagic species, what protection is going to be provided in a broad sense by that zone?

Dr Diggles: Not very much. The southern bluefin tuna will be one, an endangered species, moving through that area as it is maturing and growing. They spawn in the West Timor Sea. It is potentially an area where they may stop off temporarily to feed on bait fish, but I think Professor Kearney would be far more qualified to talk about that. It would only be a temporary form of protection, if indeed fishing was considered to be a threat. My understanding is that there is not a lot of fishing done out there at all, anyway.

Senator COLBECK: That may even be a rationale perhaps. Are you satisfied that you have had access to all the data that you need in respect of this current process? Are you aware of any data that is not visible? That has been one of the concerns that has been expressed.

Dr Diggles: There is a lot of good descriptive data available that has been gathered as part of this process. It is the interpretation of that data and how that relates to being put into a Marxan model to put the lines on the map that is where a lot of the issues come from. We had an example, which I outlined in my submission, where the model is outputting just what the people put into it. The model is not a risk based model, it is an area partitioning model. You need to be very careful how you use the data that you have. There is a lot of good science that has worked on actually getting the data, but there is also a lot of poor science that is being publicised by certain interest groups to try to manipulate that data in a way that may influence the management approach.

Senator COLBECK: I was going to ask you about that.

CHAIR: This will be your last question.

Senator COLBECK: There was a proposal or a suggestion made by one organisation that the ‘science’ indicated that 50 per cent of the region should be locked up in no-take zones. That was, effectively, a design feature of the model and not necessarily an output of the model.

Dr Diggles: That was an input of the model.

Senator COLBECK: So, what you are saying is that the result that was touted as being an output of the model was effectively an input of the model and not something that was based on the science of the region?

Dr Diggles: That was the case. It was buried in page 78 of the report, which was outlined in my submission. You had to be fairly bloody minded to go in there and see how they arrived at those figures, but essentially it was a 30 per cent minimum arrangement and added another 20 per cent on top of that for protection of threatened

species. Of course, whales and a lot of the birdlife will travel throughout the entire zone. So, essentially, 30 plus 20 equals 50.

Senator COLBECK: But whales are protected anyway.

Dr Diggles: Exactly.

CHAIR: There are a few questions that I want to place on notice, because we have run out of time. You spoke about other papers that were being done by interest groups. You have a company called DigsFish.

Dr Diggles: Yes.

CHAIR: Do you provide information to a number of interest groups?

Dr Diggles: I work for all governments—local, state and federal governments—in Australia, New Zealand and throughout South East Asia on fisheries and aquaculture matters.

CHAIR: But also non-government organisations as well?

Dr Diggles: If they ask me to, yes.

CHAIR: Have you done a fair bit of work for other recreational fishing groups and the like?

Dr Diggles: We have developed an environmental standard for fishing tournaments. That is one of the world leading things that we did.

CHAIR: Yes, I had a look at that. On notice, could you provide us with any of your scientific analysis or any of the papers that you have done on this bottom versus top fishing approach?

Dr Diggles: In fact I have some of the books here.

CHAIR: If you could give us the details where we can find information around the argument for allowing recreational fishing. Can you point us to some other scientific papers that are not scientific papers done by what you describe as ‘interest groups’ but are legitimate independent scientific papers that put an opposing view to yours?

Dr Diggles: An opposing view?

CHAIR: Yes.

Dr Diggles: We have not had a chance to table something that I found recently, which was lessons learnt by a group called the Global Environment Facility. It is a \$1 billion pilot program from the World Bank. They have been working on marine parks throughout developed countries for the last 20 years.

CHAIR: You might be able to table that, because we have run out of time.

Dr Diggles: We can table that as well.

CHAIR: Would you like to table that document?

Dr Diggles: That will be part of my response to your question on notice.

CHAIR: Is there only one?

Dr Diggles: Essentially what we are talking about here is working on the process to make sure the process works.

CHAIR: Have you looked at any of the independent scientific literature that is in opposition to your view?

Dr Diggles: Yes. There is lots of information.

CHAIR: All I am asking is whether you can provide us with details of what you have looked at?

Dr Diggles: Yes.

CHAIR: Thank you. The committee appreciates the time you have put in here today.

KEARNEY, Professor Robert Edward, Emeritus Professor, University of Canberra

[10:29]

CHAIR: I welcome Professor Robert Kearney. Thank you for taking the time to talk to us today. Professor Kearney, do you have any changes to your submission?

Prof. Kearney: No, I do not.

CHAIR: Do you have an opening statement?

Prof. Kearney: I would like to make a brief statement, yes.

CHAIR: Thank you.

Prof. Kearney: My submission to this inquiry concluded that there is a great need to have proper assessment and debate of Australia's approach to marine planning and in particular as it relates to marine parks, but I stress that there should be no urgency in that and I hope that the committee comes to the conclusion that it is the issue of the quality of the debate that is essential. The reason there is no urgency is that the international agreement on the declaration of parks has been put back to 2020.

The current debate on proper conservation and management of marine environments is, unfortunately in many cases, dominated by exaggerated claims of benefits that can be anticipated from having marine areas closed to fishing and inappropriately then called 'protected'. Area management, in the form of marine closures, cannot provide appropriate protection against the major threats to our ecosystems, in particular pollution in its many forms, introduced and translocated species; organisms such as marine pests or diseases, and pervasive threats such as ocean acidification.

The majority of Australia's fish species are highly migratory and in many areas extremely so. Fishing closures in most so-called sanctuary zones, particularly the inshore ones, do not even provide protection against fishing, at least for most of the species that occur in these zones or elsewhere. My concern is that the current process of sanctuary zones and fishing closures in marine parks is being seriously oversold and it is actually a very poor and inadequate conservation measure to truly protect our coastal ecosystems.

The claims of the benefits have been biased by irrelevant examples from other countries or distorted conclusions drawn from areas where there had been little proper fisheries management prior to areas being closed, and as such led to overdeductions about the benefits that arose from actually closing them. The distortions have been taken to extremes, in some cases, particularly in New South Wales, where the science was actually abused and made up to claim that the science supported the marine parks; in fact, the abuse of science was so great as to be fraudulent.

Part of the problem has arisen because of concern about the global state of fisheries and the action needed to be taken, but this was not looked carefully at for Australia. Since the 1990s in Australia we have greatly improved our fisheries management. The EPBC Act has played a major role in that and is pivotal to the discussion. In fact, if you look at the changes in the last five years, from 2005 to 2009, the number of fisheries assessed by the Commonwealth government to be well managed or underfished has increased from 15 to 56—an impressive figure—while the number overfished has gone down from 24 to 15. In New South Wales the numbers are even more impressive. Of the 106 species that have been assessed and managed in New South Wales, only four are currently listed as overfished, and with two of those the declines that have been detected are very likely not even due to fishing but habitat degradation from other forms. We have an extremely impressive record of fisheries management in this country.

Interestingly enough, there is only one species of Australian fish that has been declared as extinct, and that is the Pedder galaxiid. Anybody here from Tasmania will be well aware that was not due to fisheries, but due to environmental change.

Senator COLBECK: There is some question as to whether it ever existed.

Prof. Kearney: Yes, there is that question, but there has been a galaxiid found in an adjacent area that is assumed to be the one that was assumed to be extinct, but that is yet to be confirmed.

CHAIR: Let us assume we should move on.

Prof. Kearney: There are 27 species. In fact, there has never been a species of fish recorded as fished to extinction anywhere in the world, in spite of some dreadful fisheries management or lack thereof, but by comparison there are 27 species of Australian mammals and a similar number of birds that are already recorded as extinct and many more that are seriously threatened. What this is cautioning you about is the assumption that

terrestrial problems are correctly related to marine environments and terrestrial style management is relevant to marine systems, which I suggest very strongly that it is not.

Also, what is missing in this management process is consideration of Australia's long-term food security. There are two issues that come into this, and that is that if there are areas of area management that are effective then the scientific evidence that is available strongly suggests that they do not need to be very big. One of Australia's problems, as you have discussed already, is around declaring huge areas closed when most of the information that comes from those that work and the one that is thrown up most commonly is the example that Australia should follow, namely, the Leigh Marine Reserve in New Zealand, which is claimed repeatedly to be extremely successful. It is 518 hectares, or five square kilometres, and it achieves all of the objectives that are set for it.

I am extremely concerned that Australia, at the present time, has an increasing population, which according to last night's news is definitely going to go to 35 million people in the next 30 years or so, so it is going to increase greatly. Our total fish production is about 200,000 tonnes and we currently import more than 70 per cent of the fish that we eat in this country. Where is Australia's future supply of fish to come from? If we are to maintain current levels of security of supply of seafood, it is imperative that fisheries in our most productive areas, such as our warmer northern waters, like the Coral Sea, are further developed and optimally and sustainably exploited. We simply cannot lock off huge areas of oceans for spurious claims of benefits that have not been demonstrated or that could be achieved, if there are benefits that could be achieved from any closure, from the closure and proper management of much smaller areas. I will leave it at that.

CHAIR: Thank you. Senator Colbeck.

Senator COLBECK: You have talked particularly about fisheries. How, in the overall scheme of this, do we look after the traits of the benthic environment? One of the things that has been put to me through this whole discussion is that environment protection is about protecting the structure in the oceans and, of course, structure is what attracts the fish, therefore, that is why the fishermen like to be there as well. How, in this equation, do you look at protecting the benthic environment, which is one of the objectives of this process?

Prof. Kearney: As it needs to be. You identify activities that negatively impact the benthic environment and the areas in which they do so, and you manage those areas accordingly. You need to be scientifically precise about it. You need to identify what is actually damaging things. For example, I have been a strong advocate for closing many areas of Australia's east coast to fish trawling. In fact, I would close all of the New South Wales coastal waters to fish trawling, because it was damaging to benthic environments and it was overexploiting species.

Just for your benefit, back in the days when we were not managing fisheries properly, up to the eighties, the fish trawl fishery in Australia was responsible for 80 per cent of the species that were assessed to be seriously overfished and yet it resulted in only four per cent of the landed value of our catch. It needed to be very seriously managed. It was out of control. On the other hand, prawn trawling on soft sediments, particularly in estuaries, has been demonstrated to have absolutely no impact on benthic environments because those environments are so mobile in times of flood and other times, there is no detectable impact. In inshore areas, marine areas where the sand is mobile as it is in most of the east coast of Australia because of the strength of the east Australian current, it has very negligible impact and can be relatively easily managed. You need to differentiate between those two.

The simple answer to your question is that if there is a problem with benthic activity then you manage it accordingly. One of the problems we have with the southeast plan as it stands at the moment is that the area that is fish trawled that is closed may not even be big enough to properly manage that fishery, but none of the massive areas that are closed need to be closed against fisheries that do not seriously impact benthic environments or surface environments that that type of fishing may do.

Also, on the inshore areas, the major damages to benthic environments are not fishing. They are inappropriate development. You can look at Sydney, for example. We have just filled in 85 hectares of Botany Bay to build a container terminal. That is extreme damage to benthic environments. We did the same thing with the third runway and we will probably do it again. They are the sorts of things that seriously impact benthic environments, as does pollution in many forms. Siltation is one of the well known ones. In New South Wales alone they are telling us that over 60 per cent of our coastal wetlands have been lost already. That is a serious impact on benthic environments and it is not due to fishing.

Senator COLBECK: You said, as did Dr Diggles, that we have very well developed fisheries management systems in Australia. Part of this process is gear assessment. Have you had the opportunity to have a look at the gear assessments that sit alongside the current declaration?

Prof. Kearney: I have been looking at gear assessments for much of my professional life, but I have not looked, in detail, at the current document.

Senator COLBECK: Are you aware that it is available?

Prof. Kearney: I am aware that it is available, yes.

Senator COLBECK: Of its availability?

Prof. Kearney: Yes.

Senator COLBECK: I will put on the record that I have not had an opportunity to have a look of it either, so I am not aware of its availability.

Prof. Kearney: The principles do not change a great deal, though. The principles that I have been studying, as I said, for much of my professional career, are relevant to many different areas and they basically require assessing exactly what gear type you are talking about; what its benthic contact and what its damage might be; the percentage of the area that you are using it in; the type of area that you are using it in and so on.

CHAIR: Professor Kearney, I really have to pull you up here now. I will come back to you for your last question. Can you just explain 'benthic' for the people listening in.

Prof. Kearney: 'Benthic' is a term that is used to describe the bottom of the ocean or a seabed. It is the bottom. If you go into an estuary it is the sandy substrate. A benthic environment can also be a reef or many different types of mud. It is whatever is on the bottom.

CHAIR: Thank you. Senator Colbeck, last question.

Senator COLBECK: In your submission you talked about three fundamental steps that must be undertaken. Can you quickly run through your perspective on whether or not those three things have been taken. I will not go through them for the sake of time.

Prof. Kearney: They are not just prescribed in the various government legislations and agreements that I referred to, they are basically commonsense. If you are going to manage any environment or any issue you first look at the threats and you then look at the ways in which they might be managed. You assess what is appropriate for each area and what outcome you want, and then you implement the system that is most appropriate for that process and for that area. You must not assume that the threat that is occurring in one type of area, for an example, an offshore reef that is being trawled by bottom trawling, is in any way relevant to the threat and the management measures that will fix it, or is in any way relevant to the threat that might be posed to oysters in an estuary that are being polluted or being effected by introduced diseases. That is what the issue is.

The really big problems facing Australian marine environments in the future, I am firmly convinced, are introduced organisms in many forms. We have already had massive pilchard kills numerous years ago from the introduction of the Californian herpes virus, which destroyed more than 70 per cent of the pilchard populations. We have oyster diseases destroying oyster populations around the coast. They have decimated the Sydney rock oyster. They are now beginning to attack even the introduced Pacific oysters.

We have introduced weeds. Victoria has a massive problem with weeds that have come into Victoria's main bays and inlets through the aquarium industry. These are the real issues. The problems with marine environments, unlike terrestrial environments, is that once you get them in drawing lines on the water presents absolutely no barrier to their redistribution, to where they go, and so they spread. This is the issue. That threat must be addressed at its source. Giving the public the impression that we have drawn lines on the water and called those areas protected is actually a huge problem. It is creating the false perception amongst the people of Australia that the level of protection provided to our marine environments by marine parks is much greater than what it is, and that is the real fundamental conservation issue. They provide very little protection, acknowledged, against the real threats. The only threat they manage is fishing. From the evidence I have already given you, particularly since the EPBC Act came in and forced fisheries managers to enforce the legislation that they already had, which is what this inquiry is about, the fisheries management legislation in this country is pretty good, but it was not enforced. The EPBC Act played a huge role in doing that. Since then, fisheries are really not a major problem in this country. We have to eat fish. We import 70 per cent of what we have. Australia has no policy for seafood security—none.

CHAIR: Professor Kearney, you are repeating yourself on some issues and there are other issues that we need to deal with. Senator Boswell.

Senator BOSWELL: I point you to the big green area in the south west zone, which extends from Busselton around to Esperance. What scientific research would have been done in that area to close it off, to say this should

be a marine national park? Has anyone taken bottom soundings? What is the science that is relied on to make these closures?

Prof. Kearney: I would be misleading you if I said I knew, in detail, exactly what science has been done in that area. I know that there has been a reasonable amount of science done and there has been a reasonable amount of description of what is in the area. My concern is not with what science has been done to determine what is there, but what science has been done to determine what is necessary to protect it. A lot of the problems with this bioregional planning process has been that it has been based disproportionately on a description of what is there and an assumption that closing a representative part of the area to fishing is actually going to provide protection of that. That is where I believe the system has gone off the rails.

Senator BOSWELL: Let me put it to you this way. What way would you protect fishing and the environment if you did not use marine parks?

Prof. Kearney: If I did not have marine parks?

Senator BOSWELL: Yes.

Prof. Kearney: I would have a variety of measures in place. I would certainly tighten up the regulations in relation to introduced organisms into this country. I think the continued introduction of live organisms has been seriously inadequately controlled, particularly live organisms in other forms not adequately controlled. I would instigate much more rigorous control of pollution in its many forms. I would identify the hot spots for that and not claim that I predetermined those by having parks and that we are going to look at them only in the parks, because I think that actually leads you to miss many of the major areas where the problems are much worse. They will spread and go into the parks. The best example to give you on that is the Gulf of Mexico oil spill. It would not have mattered whether it was inside or outside a park, it still would have wiped out the whole area, because that is what happens with these sorts of things.

Senator BOSWELL: You said in your submission:

The area closures that result often represent excessive, heavy handed and inappropriate management for many forms of fishing and yet may not even close enough area to the one type of fishing that may require an area of management.

I interpret from your statements today that you would have a lot in common in Dr Diggles?

Prof. Kearney: I agree with many of his statements, yes.

Senator BOSWELL: You are virtually saying that it is an exercise in futility to block off large chunks of Australia and hope that by doing that and appeasing the Green movement and so on that we are actually achieving anything?

Prof. Kearney: As I said, I firmly believe that a lot of the reasons that were given for this appeared to be correct at the time. If you were to assume that the world's fisheries were overfished and fisheries management has failed, as it has in countries like Indonesia, the Philippines and many areas, then you might take that approach, but if you come to Australia you find, as I said particularly since the introduction of EPBC Act, that fisheries has not failed at all and in fact is working extraordinarily well, your requirements for that sort of management should have changed, but they have not. Closing off those areas without working out exactly what the problems are and what management is most appropriate to meet them is inefficient, inappropriate and very costly. The costs of marine parks are quite great for very little benefit. The benefits that can be achieved with marine parks, for example allocating areas to divers and things of that nature, are very real. They are very effective on the Barrier Reef around resorts in particular. But they could be achieved with relatively small areas of a few kilometres. As I said, the one that is quoted as one of the world's most successful is five square kilometres, or 518 hectares. That is the sort of area, if you really have a need to do it, even for an iconic species, you might consider closing. It would be part of your agenda, particularly for resource allocation purposes, to divers rather than anglers or anybody else, in areas where you wanted to have—in a small area—a relatively large number of relatively big fish that you might feed even to make them more visible or use them for research purposes, that is fine. Recent work in Tasmania suggests that a square kilometre is about the right size for that.

Do not lock off big areas, particularly not the Coral Sea. For example, the Coral Sea that is being proposed, is Australia's only access to the world's biggest fishery. It is a two million tonne fishery. Australia's total fish catch is 200,000 tonnes.

CHAIR: Professor Kearney, we are rapidly running out of time. You have already given evidence on the Coral Sea. I think you have made your point strongly on that. I am going to have to move on to Senator Siewert. I am sorry to do this to you, but time is a problem for us. Senator Siewert.

Senator SIEWERT: You have covered the issues. I am wondering what your opinion is of the changes that have been made to the Great Barrier Reef with the new zoning plan and whether you have read the scientific papers that have come out of that that suggest that the new zonings had a very positive effect.

Prof. Kearney: I have looked at those. I did a review for the Great Barrier Reef Marine Park Authority a few years ago on the effects of line fishing on the reef. I have looked at it in some detail. I think that the claims of benefits from those have been seriously exaggerated. But coral reefs are different and they require special consideration, so I have no problem with taking that issue and giving them special consideration.

You need to be very careful of some of the assumptions that have been made about increases in abundance. In one of the most recent papers I note their claim of benefit was that the number of coral trout doubled. It is a rather technical explanation, but that is what should happen in any areas that you close to fishing. It does not make it a benefit, surprisingly enough, because when a fishery is fished properly to maximum productivity it is normal. It is government requirement under the EPBC Act and others to have a level that it is set at, and that is normally about 33 per cent. You normally fish them down to about a third of their original density and that is when the productivity is greatest. It gets the right density for maximised growth and so on.

If you close any area that is well managed, you will get increases of about that sort. That does not mean it is a benefit, unless you take into account the loss of fisheries productivity in that area and the effects of that redistribution of the effort that you have moved on to other areas. The recent work in Tasmania suggests that when you take those into account then the net effect is actually negative.

CHAIR: You may have to take these on notice, because we are just about out of time. You indicated that you agree with many of Dr Diggle's statements. Could you give to us some information on what statements you do not agree with that he has made, because it would be interesting to get that point of view. You can take that on notice. Do you have any views on the actual bill that we are dealing with?

Prof. Kearney: I made my submission pointing out that I thought that the Senate needed to consider the bigger issues in that picture as to what went on. I do not profess to be an expert in governance or in these types of things. To be perfectly frank, having read the documents, I came away rather ambivalent. I thought that it depended largely on what I said to you, that the level of the information that the Senate has before it will largely determine the ability of the Senate to make the right decision. I did not wish to buy into the political process that might help you do that, rather than to stress that having the right information and not being misled by public perceptions that were formed by issues that were either not particularly relevant to Australia or had changed with time.

CHAIR: It could cut both ways in the legislative forum. If a government adopted in a legislative forum a program that delivered what you are arguing for, this would allow a disallowance. How would you feel about that?

Prof. Kearney: That is what I said; I am not the expert on that. I said to you that I was actually moderately ambivalent about it, because I thought it depended on the skill with which it is interpreted by the Senate as to how they implement it which will determine its effectiveness. I do not profess to be an expert on governance; so I leave that to you.

CHAIR: Thank you, Professor Kearney. You have been very helpful. We appreciate you taking the time to come here to give us your views. We will now break for five minutes and then we will come back to the program at 11.00 am.

Proceedings suspended from 10:55 to 11:04

CONWAY, Mr Russell, Chair, RecFish Australia

JOYNER, Mr Douglas, Executive Officer, Australian Fishing Trade Association

LYNNE, Mrs Judy, Executive Officer, SunFish Queensland

Evidence of Mr Joyner and Mr Conway was taken via teleconference—

[11:04]

CHAIR: I welcome representatives from RecFish Australia and the Australian Fishing Trade Association, who are appearing via teleconference, and the representative from SunFish Queensland. Thank you for talking to us today. The committee has received your submissions as submissions Nos 19, 31 and 12 respectively. Would anyone like to make any amendments or alterations to their submissions?

Mr Joyner: If I may, from the Australian Fishing Trade Association, my second last sentence states, 'However, we would point out and in our opinion the Hon. Tony Kelly', that should say, 'the Hon. Mike Kelly'.

CHAIR: I am sure Mike will be happy with that change.

Mr Joyner: I am very sorry that we were confused on that one.

CHAIR: Thank you. There are no other alterations to the submissions? As we have a short period of time and we are dealing with three submissions, I would ask you to make a brief opening statement with the emphasis on 'brief'. Ms Lynne, would you like to go first?

Mrs Lynne: Yes. Firstly, thank you very much for the opportunity to speak to you today. As you mentioned, it needs to be brief. I do not want to go to any great length, other than what is in our submission.

If this amendment bill had not been lodged we would not have had the opportunity to be speaking to you and that is the position that SunFish is taking. Our concern is not on the ability of any individual parliamentarian. Our concern is that the load of a parliamentarian is extensive. They rely heavily on the briefs and the information provided by their departments, and a lot of the time what we have found on the ground is that the departmental influence is what can be extreme in one direction or another. We feel that allowing any amendments in the marine park network to be openly discussed in parliament gives the opportunity for everybody's voice to be heard and not just those that are being sent through from an individual department.

SunFish Queensland is certainly not against the marine park planning process. We are in favour of marine parks. Our issue is with the exclusions and that it is not risk based. Thank you.

CHAIR: Thank you. Mr Joyner.

Mr Joyner: Thank you, and very briefly indeed. We are very concerned so far with the processes of consultation up to this point, and that is probably the main thrust of our submission to you today. Whether or not a disallowance is a suitable instrument is yet to be seen. However, if you engage stakeholders from the very beginning and you have their buy-in on a marine park planning process then the job is a hell of a lot easier at the end of the day.

CHAIR: Thank you. Mr Conway.

Mr Conway: Again, I will reiterate Ms Lynne's point that we thank you very much for the opportunity to be here. RecFish supports the sustainable use of marine resources and we believe that decisions should be based on the principle of shared management and shared use of resources and not the denial of access to specific stakeholders. We support any process that may increase the transparency of decision making in relation to the current marine bioregional planning process. We have noted that there are some suggestions from a number of quarters that the level of consultation and the transparency of the process in the past has been less than what was possibly expected by the stakeholder groups. We also understand that the same stakeholders have indicated that the precautionary principle may have been applied inefficiently. The underlying assumption from recreational fishers is that decisions should be based on sustainable and well managed conservation actions with input from all stakeholders, rather than the lock-out mentality of some groups.

We believe that the bioregional planning decisions should be based on a science based approach and not on emotional grounds. The emotions tend to hinder the opportunity to develop the objective and balanced

judgements and outcomes. We believe that the bioregional planning process can only benefit from a rigorous examination and review and that the process should be as thorough and open to full scrutiny by all stakeholders. We see no reason why our elected representatives should not be part of that review process if it is deemed appropriate by this committee.

There has been some suggestion that the bill may simply add a further layer of bureaucracy and cost to the process. However, from our past experience from stakeholders, we do not support that premise. In fact, the Hawke review suggested that there was a need to improve transparency in decision making and we believe that the awareness of Australians of environmental issues has meant that the public has more interest in the decision-making process and having a say in protecting the environment. We say that including the public and their elected representatives in that decision-making process makes good sense and follows good governance guidelines.

In closing, if the committee believes that the level of analysis and assessment requires the inclusion of high elected representatives in this process to share the decision-making process with the minister, RecFish will happily support the decision and will work with all stakeholders to ensure that we have a constructive and shared sustainable use of our wonderful marine resources.

CHAIR: Thank you. Senator Boswell.

Senator BOSWELL: Mr Conway, I have your submission in front of me. On page 6 you state that Dr Hawke's final report contains 71 recommendations, which are summarised into nine-point plan. Point eight is, 'Improve transparency in decision making and provide greater access to the courts for public interest litigation.' I suspect what Dr Hawke is recommending is greater access to allow parliamentarians to debate these issues on the fact that they have the correct information, and what you are supporting is Dr Hawke's recommendation?

Mr Conway: That is right, yes.

Senator BOSWELL: Chair, do we direct questions to the three witnesses?

CHAIR: I think you should take your opportunity to direct questions to the three witnesses, because when I leave you I probably will not be coming back.

Senator BOSWELL: I have a question for the Australian Fishing Trade Association. On displaced activity you state, 'To date we are unaware of the displaced activity policy document.' There is one out there. It is very oblique on what it recommends. You say, commenting on the Marsden and Jacob report dealing with displaced activity, 'No continued engagement or briefing of the final policy has been undertaken by DEEWR, and in fact the door has been closed since March 2010.' Are you suggesting that you have not had enough consultation?

Mr Joyner: I think you would all realise that this submission was done before the release of any information that is out in the public domain. As part of the SAG, we had input into the Marsden Jacobs report, a very blunt report, stating that there was no land based business displaced activity or compensation to it. We went to great lengths to pay for and attend meetings with SAG and to provide information to them, but I would have thought that before that document was released in the public domain those members of SAG that had given input into displaced activity would have had an opportunity to have reviewed the final displaced activity as released. That did not happen.

Senator BOSWELL: So, what you are suggesting is that you did not have enough consultation?

Mr Conway: No, I do not believe we did.

Senator BOSWELL: You say here, 'A socioeconomic impact on any proposed MPA must be undertaken before declaring an MPA.' Why do you make that statement?

Mr Conway: Out of fairness to businesses that may rely on business outside the three mile limit, their concerns or some sort of monitoring as to their financial wellbeing from that market be assessed before determining areas of interest for marine park lines on the map. We feel that a socioeconomic study would have been well worth while in the south west and in the other bioregions that will be coming up so that the government also realises what effect it will have on small businesses and people that rely on recreational fishing in those areas and/or charter, for example. We have not seen any information in relation to this.

Senator BOSWELL: Do you have any idea as to whether the government is going to compensate offshore businesses? Do you have a commitment that they will?

Mr Conway: I have not been through the latest displaced activity, which was released the other day and/or the maps that have been released. That is still under review from our point of view. I am not aware of anything specific in displaced activity that has been released that would compensate small businesses that rely on any clientele that may not be available in the future after these declarations.

Senator BOSWELL: In your submissions that you have made have you commented that your types of business, boating businesses and other types of businesses should be compensated for closures?

Mr Conway: Points 1, 2, 3 and 4 are part of our submission that went into SAG.

Senator BOSWELL: Have you had a response to that?

Mr Conway: No.

Senator BOSWELL: I think you make a very good point that, before you close anything down, you should have a socioeconomic impact study before the final decisions are made. I will be seeking some commitment to that. It is no good closing something down and then finding that you have a tremendous problem with net makers, boat builders and so forth. Thank you.

CHAIR: Senator Colbeck.

Senator COLBECK: Senator Boswell has just asked you about consultation and in particular the socioeconomic modelling regarding impacts of the process. Have you been asked for any input into that process, Mr Joyner?

Mr Joyner: Our input relates to a response to the Marsden Jacobs report, where we provided a fairly substantial overview from our point of view. That has gone in through DEEWR, but nothing else has been requested as such.

Senator COLBECK: I will come back to Ms Lynne and Mr Conway shortly to answer the same question, but I just have a final point to you, Mr Joyner. You talked about the government using 2001 recreational fishing and boating data to determine the current restrictions in 2011. Can you give me a sense of the change that might have occurred in that process in that time?

Mr Joyner: No, I cannot give you a sense of any change, if that is what they have from the last survey that was undertaken. I guess they are using recreational fishing effort and the socioeconomic benefit of recreational fishing from 10 years ago. It is not very modern or forward thinking, in our opinion, to do so when there is an opportunity for government of any persuasion to get the latest statistics applicable to Australia's coastline and the businesses and people that utilise the resources so that they can make the best decisions in relation to marine park planning.

Senator COLBECK: Ms Lynne, can you respond to the same question that I just asked Mr Joyner?

Mrs Lynne: Could you repeat the question?

Senator COLBECK: Firstly, inputs into the socioeconomic modelling process and also your perceptions about the government using 10-year-old data.

Mrs Lynne: I will start with the second one. There is a lot more recent data that could have been used. They have gone back to some really old data, because it suited the purpose. The number of recreational fishing vessels as well as commercial fishing vessels has changed considerably in that time. With everything else, you will find that a lot of the decisions that are being made are made on really old observations.

As for input, once again, it goes back to a lot of the input that we have had through the whole process. We have been given the opportunity to have our say, but a lot of that does not appear anywhere in any of the results or the outcomes. A perfect example would be, right at the very beginning of the bioregional planning process when we were asked for opinions on the categories and the determinations, we were very clear that we were not comfortable with the ICUN categories that they were using; that there were Australian standards that more suited our environment and Australia's requirements.

You have the Outlook Report, which is a Commonwealth government report on the largest marine park that we currently have, the Great Barrier Reef, that says that the biggest impact on the viability and the sustainability of the Great Barrier Reef is water quality and climate change. If you are a large green zone, like the one that Senator Boswell was talking about earlier, which very large green zone had in its limitations something that restricted the inflow of pollution into that green zone, we would be extremely supportive of that. It gets back to the risk assessment, which is the one thing that we have pushed the whole time that does not appear anywhere. In any of the documents, in any of the regions, there is nothing there on risk based assessment. Recreational fishing, in particular, has very low risk in any of those very important things that are being protected.

Senator COLBECK: To summarise your position that you have given, both in your introductory comments and also here, you do not believe that your voice has actually been reflected in the process thus far. Therefore, with the capacity for the parliament to have a final consideration you believe that there is an opportunity for your voice to be heard as part of that process.

Mrs Lynne: Yes.

Senator COLBECK: Mr Conway.

Mr Conway: I can answer that question from a Victorian point of view, because the Victorian recreational fishing peak body conducted a study two years ago by Ernst & Young. It demonstrated that the information from the previous 10-year-old data was quite markedly out of date and did not reflect the change of demographics across the Victorian state. It did not look at the flow-on effects that recreational fishing brings to small regional centres, regional small to medium business and to tourism and those sorts of benefits, and also that the flow-on benefits to industry, such as the boating industry, the tackle industry and the myriad small businesses that are inside each of these regions. I believe the magnitude of difference was three or four times what was originally estimated as being the value of recreational fishing. I think that is particularly salient for the Commonwealth at the national level, because there have been some major changes in the opportunities for people for recreational fishing to target species further out from the three-mile limit. A lot more boats are able to get out to the shelf and spend their day catching fish, which was not possible 10 years ago, mainly due to technology and better boat building processes.

In terms of the value that has been attributed to recreational fishing, I think it has been minimised and the information that is being used is out of date. There really needs to be a proper review with current processes to get a good valuation of what recreational fishing is worth to the Australian economy.

Senator COLBECK: You commented on changing technology for recreational vessels. I am aware of a report that was provided to former Minister Garrett in relation to mako shark fishing from the department that indicated there would be no effect from the proposed prohibition on recreational fishing for mako sharks. Do you think that is, again, a reflection of the fact that the data that is available to the government in its decision-making process is not adequately up to date?

Mr Conway: Yes, that is true. There was a perception that mako sharks were not a targeted species—not an iconic game fishing species—and that there was a small amount of fishing for that particular species. In fact, the mako shark is an extremely valuable game fishing species and a number of game fishing associations, even ANSFA, the Australian National Support Fishing Association, has mako as one of their iconic target species in their competitions. It is not necessary to keep those fish. It is a catch and release type fishery, but they are still a very iconic species. Again, the information that was provided to the decision makers did not take into consideration the information that could have been provided by game fishing associations and the sports fishing associations.

Senator COLBECK: Thank you.

CHAIR: Senator Siewert.

Senator SIEWERT: I would like to go back to the issue about data. I was not quite clear as to whether you thought there was other suitable data available or whether you were saying there needs to be some collected? I do not mind who answers that question.

Mr Conway: I can answer that. I think it needs to be collected again and it needs to be an Australia-wide approach. A number of states have done something similar, but they tend to be very much state centric. They are looking at the data from a state point of view, and the offshore, from two nautical miles out, endeavours are not necessarily taken into consideration appropriately. It is more about how recreational fishing impacts on that particular state. Trying to extrapolate information about the Commonwealth and about offshore fisheries from state based information can cause problems.

Senator SIEWERT: How up to date are the various states' data? I presume that varies across states.

Mr Conway: It does. I believe, at the moment, Victoria is at the forefront. I believe New South Wales is looking at doing something similar, but I am not sure about the other states at this point in time. I would say that Western Australia would probably be similar, and I believe Ms Lynne would be able to answer about Queensland.

Mrs Lynne: There is a Queensland survey under way at the moment, but it is a very small selective data set that they are using.

Mr Joyner: I would like to say something in response. The data that Victoria alludes to was a study done by Ernst & Young in that state. We know that other studies in other states are being undertaken, but there is no continuity of the process. Thus we will end up with different questions and different answers. There is no national picture or snapshot that will have continuity. That is a problem.

Just on statistics, the industry value in 2002 was \$550 million per annum. In 2005 it was \$660 million per annum and in an unpublished report by Ernst & Young for this industry it is estimated to be now \$990 million.

Within a 10-year period you can see the increase in the value of the tackle industry itself, yet we do not know what increases or decreases are occurring out there from the end users.

Senator SIEWERT: Thank you. I would like to go back to the issue of consultation. I know there has been some discussion about the south west process. Your comments, as I understand them, are that you do not think that the government has taken on board the sector's comments adequately.

Mrs Lynne: Yes.

Senator SIEWERT: There are issues from the south west. We have been talking about the big green zone, but off the cape to cape area you would be aware that the conservation movement has concerns that that is a more multiple use zone and that there are areas where their suggestion is that the science suggests they should be better protected. I am sure that we are going to have the conservation movement in this afternoon saying their voices were not adequately heard and that there are some areas there the science says should be more strongly protected. I think we hear that from all the sectors. I would like to spend more time in the cape to cape region. I spend some time down there and I know it quite well. A lot of fishing goes on there. I know there are some very strong voices. I was involved in the initial discussions over the cape to cape marine park in state waters. I would suggest perhaps that the voices were heard very strongly there and that is why we have some of the zoning there, which does not have as heavy conservation protection as in some other areas.

Mrs Lynne: My concern with the consultation is in the very initial stages. The point we are at now is an issue over whether fishing should be allowed or not. That is the same questions that we are getting from the conservation sector. My comment back to the conservation sector is, yes, we also agree certain items need protection, but my question is: protection from what? That is the crux of the matter. Fishing does not have that impact. The biggest impact is water quality. I would like to know how these green zones are going to protect that community.

Senator SIEWERT: You did not really answer my question. I do not understand. You are saying that they did not listen to begin with.

Mrs Lynne: Yes.

Senator SIEWERT: But you have a plan, particularly in some of the heavy use areas that, I would suggest, strongly reflects fishing voices?

Mr Joyner: I could answer that for you. I think the plan also shows that there has also been some very strong conservation voices.

Senator SIEWERT: I am not saying—

Mr Joyner: Please let me finish. I am not trying to be critical or anything. I am just saying that there are voices being heard in the planning of the bioregional requirements that Australia has signed off on. We know that prior to public release maps have been taken to certain stakeholders for their opinion and so forth on it. We know that has taken place. But behind all of this what has not been made available to recreational fishers and possibly others is any form of briefing on the science used to determine these areas of closures. We have never been presented with science to explain why this is important and why it is not important. None of that has ever taken place up to this point. I think that is a major concern. Where is the science? Why is it that the stakeholders—whether they be conservation groups, industry groups or whatever—have not sat in a room and been given a whole overview of why these areas are important?

Senator SIEWERT: You are saying that the rationale has not been presented?

Mr Joyner: No.

Senator SIEWERT: We will ask the department about that this afternoon, because I think there are different views from different people about what level of rationale has been presented.

Mr Joyner: It is all very well to use the word 'consultation'. It is better to use the word 'engagement' and act upon that word. Engage stakeholders, have the buy in before you release it to the public and that way everybody knows pretty much what they are going to get or not get, and then we can hopefully all live happily ever after.

Senator SIEWERT: Thank you. I am aware of the time.

CHAIR: Mrs Lynne, we have heard about the economic benefits of recreational fishing. I am a living example of that. I spend a lot of money on fishing gear, catch nothing and I must say that, if I had my economic analysis, I would be eating the most expensive fish by kilo in the world.

Mrs Lynne: Most of us do.

CHAIR: I enjoy going out fishing and I am not very good at it, but there has to be a balance.

Mrs Lynne: That is right.

CHAIR: What I am concerned about is when I get an opportunity to go fishing and talk to the local people they all say that it is not what it used to be. That is what I hear back all the time.

Mrs Lynne: A lot of that is changing baselines. Once again, as you well know, fish are transitory. They will not stay in the one area and they are very reliant on the ecosystem that they are within. If anything happens to those structures they will move. That is where they go to for protection, for breeding and for feeding. We also have similar concerns that fish are moving further away from the onshore areas out into the deeper waters and into less populated areas. You will find that they are not so much being overfished, because we have good fisheries management, but the fact that there is degradation within the ecosystems, and the issue is the structures. What we would really like to see is the marine park planning systems actually looking at protection of those structures. That is what they are designed to do. They have gone into great lengths and done a really great job of identifying what needs to be protected, but what we require is the next step, which is to say, 'What are the risks and how do we protect them?' Keeping fishermen out, when they have already been identified as having a low or minimal risk, is not going to achieve the outcome of protecting that. What we need to determine is what the risk is and how we protect that risk. The fish will come back. Once the water quality is fixed and we are getting less sedimentation covering up the coral reefs and less human intervention into the environment, the fish will be back. The fish will be there.

CHAIR: I am not an expert on it, but it seems to me that there are three levels. The recreational fisher person like myself, who does not do much damage to the environment except lose the odd lure. But there is an argument that recreational fishing does damage the environment, and I am sure we will hear a bit about that. There is then the commercial recreational fishing, like charter boats and the like. Then there is the commercial fishing, which is completely separate from any of the recreational stuff. Do any of the witnesses have a view on the impact of each level of those groups on the fish population?

Mrs Lynne: Once again, it is looking at what it is that you are trying to protect. None of the zones that have been identified so far have listed their major reason for protection as protecting fish stock. They are all to protect structure and specific structures. No commercial net fisherman is going to run his multimillion-dollar enterprise into a structure. It is not so much to not destroy the structure, but he is not going to destroy his livelihood.

The charter sector needs to be going out there day after day, week after week. A lot of those industries pass it down to their family, so they do not want to see that end. They do not want to lose their superannuation or the perpetuity of their industry, so they are also out there to protect it. Once again, I would have to go back to saying that we need to look at what is being protected and how it is being protected.

CHAIR: I would like to ask each one of you this question, but we only have a couple of minutes. With this proposed legislation we have heard a lot about the rights of fishermen and the economic impact, but we have not had many submissions on the legislation that we are actually dealing with. The legislation is to allow for a disallowance. If a parliament made legislation that met all of your concerns that you are raising today would you still think that there would be a need for a disallowance?

Mrs Lynne: Absolutely. No matter what side of politics or any position that you take, it has to be a better outcome for the whole of the country if it is open and allowed for everybody's input. As I mentioned before, politicians are influenced by information and have to base most of their judgements on the information that the department can gather for them. What we need to see is all sectors of the community, through various departments and their interests, having that input.

CHAIR: Do you consider there are experts in these government departments? We hear a lot of concern about government departments. I think they get a bit maligned from time to time. Some of the most competent people that I have come across in my whole career have been people in government departments.

Mrs Lynne: Absolutely.

CHAIR: They are experts in their field.

Mrs Lynne: They are experts in their field. I, myself, have had a long history in the public service and most public servants do an excellent job. The problem that they have is that a lot of the really well informed people are career public servants, and it is almost like tunnel vision. They have really good goals, follow due process, but they can be insulated from some of the external information that is out there and available.

CHAIR: I am afraid that we have come to the end of this session. I would like to thank each one of you for your participation and help you have given the committee. We certainly appreciate the effort that you have put in to be here today.

REIBEL, Mr Kevin, President, Tin Can Bay Chamber of Commerce and Tourism Inc

TODD, Mr Peter, Vice President, Tin Can Bay Chamber of Commerce and Tourism Inc

Evidence was taken via teleconference—

[11:42]

CHAIR: I welcome representatives of the Tin Can Bay Chamber of Commerce and Tourism Inc who are appearing via teleconference. Thank you for appearing here today. The committee has received your submission as submission No. 9. Do you wish to make any amendments or alterations to your submission?

Mr Reibel: No. We do not wish to make any amendments or alterations. We have a brief statement that we would like to make at the appropriate time.

CHAIR: Who would like to do the opening statement?

Mr Todd: I will. Are we ready to go now?

CHAIR: Yes, we are.

Mr Todd: This is very exciting. It is a lovely day up here in Queensland. Thank you very much for the opportunity. There is a lot of anger and frustration in the Australian community about the actions and decisions by all levels of government. The difficulty for me has been to annunciate and focus the frustrations. I guess in one word it is 'management'. Our Western society works because people are doing things that make money. Some government departments, particularly the environment, are it seems idealistically against it. You have public servants with agendas. To me that is an oxymoron. You have powerful well funded international groups with enormous influence on senior public servants pushing agendas that do not get a foothold in their home countries and you have successive ministers that believe they are doing the right thing by closing more of Australia's food producing areas, penalising our already devastated manufacturing industry, limiting our mining industry with sanctions and restrictions. It is obvious to blind Freddy that they cannot manage—and more importantly the department officers cannot manage—what they control now.

Over the last 40 years the power of the environment department has gone from nothing to enterprise stopping. What is the point in having a vast Great Barrier Reef Marine Park when we have no funds to ensure the safe transit of huge ships? The Great Barrier Reef Marine Park has cost the people of Australia hundreds of millions of tax dollars. The fishing families and their employees are gone from the industry. Tin Can Bay's port has gone from 55 boats to just 12. People visiting the Great Barrier Reef now pay to visit the reef and all they get for their money is another public servant to collect their money. What is the purpose of the closure of vast areas of oceans to trawl fishing and mineral exploration without any ability to manage or any alternative to feed the nation or continue to make a country wealthier in the future?

I was speaking to a senior fishing expert within the environment department and we were talking about the Fraser area of further assessment. He suggested that as we were not using the area beyond the Continental Shelf they could take that and close it up without any effect. My response was, 'Why would you want to do that? You cannot manage what you have now and if it is not being used then frankly it is not being abused.' Who is to say that we might not need this area in the future to feed our nation or for other resources? He was surprised and taken aback by that novel thought.

What is the point in proposing a price on carbon when the major world economies will not and our contribution as Australian citizens and taxpayers is bugger all, or to put bugger all into context one millionth of one per cent? Why stop the Traveston Crossing dam because of a single inedible fish species when the dam would save regular flooding of the towns of Gympie and Maryborough, and as part of the South East Queensland water network probably have saved Brisbane as well? Tell me what right the Department of Environment and the Environment Minister have to make a decision on a proposed new marina to be built in Tin Can Bay which is designated harbour fishing? In this case voices of protest say that the development means the loss of a few mangroves and sea grass, but there is no sea grass in the development area, and frankly mangroves are in plague proportions around the Tin Can inlets, yet this project has the ability to make a significant economic contribution to our community.

There has to be a wider review of the environment department's power, and decisions judged against what is best for the Australian people, not the views of the foreign extreme conservationists. The public servants have to start making decisions in the interests of the public. In the meantime, the only way to achieve balance is to have

environment decisions reviewed and ratified by the wider community representatives, the houses of parliament. Thank you.

CHAIR: Thank you, Mr Todd. Just before I go to Senator Boswell, I would like to ask a question. Mr Todd, do you have any views on the actual legislation?

Mr Todd: Only that we see it as a wise start to a review of the environment department's powers and the decision-making process.

CHAIR: Thank you. Senator Boswell.

Senator BOSWELL: What you are saying is that you believe that the bill before you, that we are reviewing at the moment, will give the parliamentarians that represent areas such as Tin Can Bay a power to review the decision, and I am asking you whether you support that?

Mr Todd: Absolutely.

Senator BOSWELL: Your phone is dropping out.

Mr Reibel: We do. I applaud yours and Senator Colbeck's bill. It is well overdue.

Senator BOSWELL: I have briefly read your submission and you state a figure of \$320 million. If the closure takes place outside Tin Can Bay, what is your assessment of what Tin Can Bay loses in revenue?

Mr Todd: The \$320 million was the amount of money that taxpayers have spent on paying out fishing families in the Great Barrier Reef Marine Park and others.

CHAIR: We are having some real difficulties hearing you. We may need to slow down a little bit on the teleconference, because it is very difficult. It is not your fault; it is just the way it is.

Mr Todd: The amount of money it will cost Tin Can Bay is broken up into a number of areas. Firstly, there is the professional fishing fleet, which as I said is now down to only 12 boats and then we have a growing tourism industry. Tourism industry reports have shown that 62 per cent of the people who visit our area are here to engage in fishing and fishing related activities. The cost to Tin Can Bay would be devastating. Just as important as the cost of making the decision is the cost in delaying the decision. There are people who cannot make business decisions because this closure is hanging over their heads. There are people that want to get on and buy additional boats. My colleague on the phone with me wants to buy another trawler. He is not going to be able to do that while this thing is hanging over his head. There are people who are trying to sell their fishing businesses. They cannot do that while this thing is hanging over their head. When these questions are raised, as I have done with the minister, the response is, 'You've got to go through due process.'

CHAIR: Senator McEwen.

Senator McEWEN: I do not mind who answers my question. Getting back to the content of this bill, if Senator Colbeck's bill were passed by the Senate, and if a bioregional plan was then presented to the Senate that was unacceptable to the people that you purport to represent, and the Senate allowed that plan to stand then are you saying that you would accept that as the umpire's decision and it would be over, done and dusted?

Mr Todd: At some stage of the game you have to accept the umpire's decision, but one would hope that there is a broader base for consultation and, as the houses of parliament are community representatives, then perhaps the consultation may be more genuine. I would hope that with those decisions of the environment minister having to be ratified by the houses of parliament there would be a more genuine decision made.

Senator McEWEN: The information that the Senate is going to take into account will be the same as the information that the minister is taking into account. Do you think that you are pinning your hopes on a piece of legislation that at the end of the day is going to be subject to the political influences in the Senate or the House of Representatives at the time?

Mr Todd: We have had a number of discussions with people from the department and I can assure you that we get a much more frank and honest response from representatives like Senator Boswell and Senator Colbeck.

Senator McEWEN: After 1 July when the representatives of Senator Siewert's party will be in more significant numbers in the Senate and, therefore, there might be a different dynamic in the Senate, it may be that the bioregional plans that get to the Senate, if Senator Colbeck's bill is successful, are going to be left standing.

Mr Todd: That is an excellent point and I guess we would then have to take a leaf out of the Arabs' books and perhaps do some rioting in the streets. There is nothing we can do about what is going to happen after July or any decisions that may or may not be made, but it would be a great disappointment if we did not get genuine reviews of a department that is frankly out of control.

Senator McEWEN: But you think that rioting in the streets is an appropriate way for the fisher people of Australia to address this issue?

CHAIR: I am sure that if there are riots in the street in Tin Can Bay that would not do your tourism opportunities much good. It looks like a lovely place. I would counsel you against riots in the street. Mr Todd and Mr Reibel, thank you very much for your input here today. We thank you for taking the time to help us.

BAYNE, Mr Wayne, Divisional Chair, Coral Sea Access Alliance

JONES, Mr Donald, Chief Executive Officer, Marine Queensland

[11:57]

CHAIR: I welcome representatives from Marine Queensland and the Coral Sea Access Alliance. Thank you for coming along to assist us today. The committee has received your submissions as submission Nos 10 and 23. Do you wish to make any amendments or alterations to your submissions?

Mr Bayne: No.

CHAIR: Do you wish to make a brief opening statement before we go to questions?

Mr Bayne: Yes, I would like to do that. Thank you for the opportunity to make some opening remarks on the submission presented by the Coral Sea Access Alliance on the proposed amendment to the Environmental and Biodiversity Conservation Amendment Bill. Having lived and been involved in the marine industry in Far North Queensland for 30 years I have experienced first-hand financial and social ramifications of poorly considered and inappropriate marine planning legislation. The review of the zoning of the Great Barrier Reef Marine Park in 2004 and the resultant cost to taxpayers for restructure assistance, the inadequate advice provided to the decision makers that resulted in business closures, failed family relationships and the horrendous social impacts of those caught up in the mandatory criminal conviction fiasco for green zone infringements, demonstrates the havoc that poorly researched decisions can have.

What we are seeking to do here today is to ensure that these or similar mistakes are not visited again on members of the Australian public and on the taxpayer. The potential impacts of repeating them will have much more serious ramifications this time.

The area currently being assessed is more than 15 times the size of the Great Barrier Reef Marine Park. The Department of Environment and Heritage's review of the Great Barrier Reef Marine Park Authority in 2006 found significant issues with the consultation and transparency processes used during the 2004 zoning review of the GBR. With the experience that is now available there is no excuse for these mistakes to be replicated. Our submission does not seek to argue the scientific requirement for, or effectiveness of, marine parks; we are here to present a submission on the process involved in coming to those decisions. We have tried to draw attention to the consequences of inadequately thought-out policies and the way that they affect communities socially, legally and financially.

The Great Barrier Reef Marine Park rezoning process has provided valuable experience to both governments and bureaucracies, unfortunately at the expense of regional communities of the area. This decision will not only impact on direct users of the zoned areas, its effects will flow to millions of Australians in coastal communities.

The marine bioregional planning process is a mammoth undertaking, affecting seven million square kilometres of Australia's exclusive economic zone. It is not appropriate to continually rely on little else but exclusion and fisheries restrictions as the panacea for almost every marine environmental problem. The ever-growing list of potential environmental crises such as sediment run-off, climate change, coral bleaching, sea temperature increases and ocean acidification are unlikely to respond positively to exclusion measures. Complex issues such as this require the input of a broad range of qualified and independent experts, experts who are prepared to offer advice based on scientific fact untainted by ideological influence. Previous experience with similar issues demonstrates the need for the scrutiny and expertise to avoid the pitfalls which we know from experience exist in these decisions.

In conclusion we are not asking for a special process to be implemented to deal with this decision. Such a system is available to us: the scrutiny of parliament. Elected parliamentarians should be afforded the right to participate in a decision that will affect those whom they represent. This issue is important enough to be afforded access to that system.

Mr Jones: I would also like to give my thanks and appreciation for the opportunity to appear here today. The views I am expressing today are those of the recreational and light commercial marine industry in Queensland. It is a fairly broad church that we represent and we have outlined the scope of the industry in our submission.

I would like to just say right up front that this industry, unlike others that you hear from time to time, is actually a very strong supporter of the marine bioregional planning process. In our view it is a critical process not only to the long-term sustainability of the marine environment but also to our industry. Our industry is obviously

supported by regional and urban communities throughout the length and breadth of the Queensland coast. It also has a critical sustainability context for those regional communities.

When we look at process, which in our view is what today is really about, it is really important that the process be robust and transparent to ensure that the best possible outcomes are delivered for the benefit of all. We think that in terms of that process it is entirely appropriate that the Australian parliament also have the ability—and I emphasise ability—to review the outcomes of the process. Why? Because our experience in marine planning and environmental protection regimes which have been applied within the state has given us the actual experience that some of the intended consequences, or even unforeseen consequences, can be quite significant from an economic, social and even an environmental perspective.

It is important in our view that the process be one that facilitates a sophisticated process that delivers the outcomes that certainly our industry seeks, anyway. We would say that the process needs to have the rigour, the transparency and the appropriate review mechanisms. We see this as being an appropriate review mechanism if need be when an outcome is delivered.

As we see it at the moment the process is one where the minister has the ultimate decision-making power. This is not an aspersion against any persuasion of the government but our view is that, consistent with any sort of natural justice type mechanism, it would also be appropriate that an additional review mechanism be an outcome.

In terms of the controversy, if you like, and the noise and the bluster that is often heard around environmental issues, particularly marine environmental issues, from the various groups we see that there is quite a diverse range of users and uses of Commonwealth waters. We have outlined that in our submission. What is also apparent is that there are also competing needs and competing views about how those waters should be managed, how threats are identified, how they are assessed and what are the appropriate management mechanisms that are put in place. In our view, by virtue of that fact alone it would also highlight the importance of having appropriate mechanisms in place to undertake those reviews.

Some of the experiences that we have encountered in terms of perhaps unintended and unforeseen outcomes are things like mandatory criminal convictions for recreational fishers, which ironically was resolved through a reference mechanism to the Senate. We have outlined in our submission what we think that the process needs to be like in terms of what a world-class process would look like, but we also think it is appropriate to learn from the past. When you look at some of the other even recent types of events where, even though these processes have been in place, we still today have processes which allow activities such as coal and cargo ships to traverse very sensitive marine environments. When I make that statement what comes to mind is the name *Shen Neng 1*, the coal carrier. I think we were lucky but next time we may not be so lucky.

Also there are significant oil spills. We have seen that in the west but we have also seen it in Queensland with a ship called the *Pacific Adventurer*, which was ironically navigating through green zone protected areas but we nevertheless had a significant oil spill which had a significant impact on the environment and on the users of the products and services that this industry supplies.

I guess most recently with the floods in Queensland there were significant pollution events out into a large chunk of the Queensland coast from Rockhampton down to the Brisbane River basically where there was all sorts of pollution which was washed out into very, very sensitive marine environments.

I am a fairly simple, Queensland country boy and I guess one of the appropriate tests that we always tend to apply when you are looking at the somewhat complex processes is what I call the IGA test. You go down to your local IGA supermarket and intercept someone there and really ask three simple questions. What are we trying to protect? What are we protecting it from? What is the best management option to minimise these risks? I am not suggesting that you yourselves apply that test, although feel free to use it if you wish, but clearly as I said there is a lot of competing debate even amongst the scientific community and other users. We find that when you actually distil it down it actually tends to take a lot of that noise away.

In terms of the bill that is before you today, the recreational light commercial marine industry is a supporter of it and we would urge its adoption.

CHAIR: I am sure we all from time to time conduct the IGA test but I suppose, given that we are making laws, we also have to take the IGA test on with the CSIRO test. Mr Bayne, you indicated that scientific facts should be untainted by ideological influence. Would you describe the CSIRO as not being ideologically influenced?

Mr Bayne: I am not particularly pointing to the CSIRO. We are here to talk on this process. I do believe that this process both in the Great Barrier Reef Marine Park Authority and to some extent in this issue is tainted by some ideological process, yes.

CHAIR: Are you saying the CSIRO are tainted?

Mr Bayne: I am not for one minute suggesting that there is any one particular person here. I did not mention the CSIRO—

CHAIR: I am asking you.

Mr Bayne: I have no opinion on the CSIRO.

CHAIR: Do you know much about the CSIRO?

Mr Bayne: I am aware of the CSIRO, yes.

CHAIR: You are aware of it. Do you know what they do in terms of advising government on—

Mr Bayne: Well, yes, I do—

CHAIR: If I may finish, do you know what CSIRO do in terms of advising government about the ocean and the health of the oceans in Australia?

Mr Bayne: Not particularly on the CSIRO, no.

CHAIR: We can take it that the CSIRO are not one of the ideological influences that you know much about—

Mr Bayne: Absolutely.

CHAIR: As to the issue of noise and bluster, Mr Jones, I suppose there are some politicians who are influenced by noise and bluster but on an issue like preserving the Great Barrier Reef, preserving oceans for future generations, I suppose politicians have to take advice. Are you aware of what the CSIRO does to advise government?

Mr Jones: Absolutely, and we commend the work that they do. The issue I guess in terms of what we see as being one of the key failings of this process, certainly to our industry, is that there seems to be this obsession with whether a fish can be caught or not caught. I dare say even the scientific research undertaken by the CSIRO and others would indicate that some of the risks to the Great Barrier Reef and other marine environments are outside of the scope of fishing, yet when you sit back and look at the nature of the debate, media comment and the time spent on the marine protection debate, it all seems to be about whether fish can be caught or not caught. From our perspective the key issue is that the issue about catching fish is important because a lot of people who use our products use them to go and catch fish, but the reason that people can catch fish is that we have healthy waterways. The impact on healthy waterways tends to be about land based activities and the impact of activities such as, as I said, coal ships, cargo ships and oil spills and those sorts of things.

CHAIR: Some of the evidence I have heard in other committees I have been involved in say that our waterways are not that healthy, that there is acidification because of global warming, the temperature is increasing and that is making big changes. Do you agree with that?

Mr Jones: We do agree with it and that is in our perception that the preponderance of exclusion zones is actually misguided. We should be going back and saying, 'What is impacting the health of these waterways?' You have heard Dr Diggles and Professor Kearney and I am sure many others tell you it is a whole range of other factors. That is where we think that the focus, the resources and the research should be applied, not in setting up exclusion areas as the perceived solution to these issues, because we do not believe it is.

CHAIR: Do you believe that there is a problem with global warming in terms of the acidification of the ocean—

Mr Bayne: I believe there are environmental impacts that should be addressed, yes. But as I said in my remarks, I do not believe that many of those issues can be effectively dealt with by exclusion and this is really the issue as far as that is concerned. I think that under those circumstances what we have to try to ensure is that members of parliament on both sides are exposed to the entire issue of what we face here and do not just go down a particular path which is where we seem to be going at the moment. That is our issue and what we are talking about here. We have tried to accentuate that this process needs to ensure that parliament gets to have a look at it and all those people who have been voted in to represent us have the ability to bring their expertise to the argument.

CHAIR: I do not think that my expertise would add much to the scientific argument but be that as it may I have to take advice and it comes back to that issue I suppose of whether you take the IGA advice, do you take the CSIRO advice or do you try to nail both of them. But that is the balance that politicians have to deal with.

Mr Bayne: I am sure you would listen to more than one side of the argument and make your own opinion based on what you hear and not necessarily from a specific group that has access to you, or for a specific area that affects your particular electorate.

CHAIR: My colleagues would say that I am well-known for that.

Senator BOSWELL: I would like to direct a question to Mr Bayne and the Coral Sea Access Alliance. What is the status of the Coral Sea at the moment?

Mr Bayne: The status of the Coral Sea is that the minister made a proclamation on the Coral Sea in—I think it was May 2009—

Senator BOSWELL: What does the proclamation state?

Mr Bayne: The proclamation basically says that you can do whatever you want to do in there except for what you could do previously, because what we have to remember is that in the Coral Sea 60 per cent of the hard reef area is already protected and has been since 1983. From what I can understand this proclamation puts some requirements on charter boat operators and some tourism operators to provide information. One of the interesting things with the permit application for the charter boat industry is that these people are required, providing they have space on the vessel, to take people from the department out in order to observe what they are doing out there so that they can report back, I presume to government, on what the activities are. It is interesting to note that having checked with the entire fleet of the Cairns Professional Game Fishing Association, they say that since that has been in the permit not one application has ever been made for them to take anybody out there.

Senator BOSWELL: How did this Coral Sea become declared?

Senator COLBECK: Could I just ask a question here?

Senator BOSWELL: Yes.

Senator COLBECK: What you are saying is that since the declaration has been made it has created a perception that you cannot go out there so no-one has applied—

Mr Bayne: No, it has not. There are several permits for the charter boat operators but one of the clauses in that permit which they did not have to have before was that if necessary, or if requested, they had to take somebody out from the department at no cost in order to observe what they were doing. The explanation given to us on that was that they wanted to do that because they wanted to see what impact the particular industry was having on it. As far as the charter boat industry is concerned the Cairns Professional Game Fishing Association—and I spoke to the president of that association as late as last Friday—there has never been a request made to do that.

Senator COLBECK: You would have thought that was being done to gather information.

Mr Bayne: I would have thought so, yes, otherwise why put it in the permit requirement?

Senator BOSWELL: How did that come about? Who lobbied for it?

Mr Bayne: It was lobbied for mainly by the Pew Environmental Group. They put up a substantial submission to the government at the time and Minister Garrett acceded to their requirement and made the proclamation.

Senator BOSWELL: Who did Senator Garrett talk to? Did he talk to you?

Mr Bayne: No.

Senator BOSWELL: I am sorry, Minister Garrett. Did he talk to anyone?

Mr Bayne: To the best of my knowledge, no, there was no consultation prior to the proclamation.

Senator BOSWELL: What do you envisage for the Coral Sea when that becomes zoned as an international MPA?

Mr Bayne: As to what impacts it will have?

Senator BOSWELL: Yes.

Mr Bayne: It is already having an impact on investment in the charter boat industry. It is having an impact on the commercial fishers who operate out of the ports in that area. It is a level of uncertainty. What we have also got to remember is that areas like Cairns were effectively built on game fishing. That is the days of Dolly Dyer, Bob Dyer and Lee Marvin et cetera. The very industry that put Cairns on the map is the very industry that is now under attack for absolutely no reason for a catch and release fishery.

Senator BOSWELL: How is Cairns going economically?

Mr Bayne: Cairns is suffering at the moment. It is not doing very well. Cairns is having a pretty tough time. A lot of the impacts of this have been going on for a lot longer than we are seeing with the significant downturn now.

Senator BOSWELL: What was the impact on your industry from the closures in the barrier reef?

Mr Jones: The combination of reduced access in different regional areas. The Barrier Reef, as you are obviously aware, is a large area. But in areas adjacent to locations like Bundaberg and Far North Queensland where the level of access was reduced fairly significantly what we have seen are closures of things like boat dealers, scaled-back charter boat operators and marine tourism operators. It has had an impact on the manufacturing sector in the sense that the demand for boats and the products that go with them in some of those regional areas is reduced so it has impacted on the manufacturing sector as well.

Senator BOSWELL: Has Pew put any scientific evidence to the government? Has Pew made any submissions to the government on the Coral Sea?

Mr Bayne: Yes, Pew has made a submission. This is what originally started this process—

Senator BOSWELL: Who did that submission? Did they get a scientist to—

Mr Bayne: I believe they had some scientific input into it, yes, but I am not aware of who the scientist is off the top of my head.

CHAIR: By the way I have just been looking at the fact that we will have the Pew Environment Group and a Miss Imogen Zethoven, the director, will be here this afternoon. I am sure you can ask her the questions about any—

Senator SIEWERT: The button has been pushed.

CHAIR: Is there something I do not know here?

Mr Bayne: Can I just make a brief comment on the question you asked on the impact that the zoning had? There was a report done for the government called the Hunt report and it showed varying impacts, if I could just read you one or two sentences of it?

Senator BOSWELL: Is this on the Coral Sea?

Mr Bayne: This is on the Great Barrier Reef Marine Park but it demonstrates the impact that it had on the industry. It says:

The analysis is confined to salt water fishing from boats. Then there was an increase in the participation rate of non-GBR areas of six per cent between 2001 and 2004. Estimates of downturn in salt water fishing from boats due to the RAP are estimated at Cairns, 57 per cent; Mackay, 24 per cent and Townsville, 13 per cent.

Senator BOSWELL: People not using their boats?

Mr Bayne: Exactly, people finding other things to do. I think that sort of demonstrates the level of impact these things can have.

Senator COLBECK: Going back to the basis of your submission, I think both Mr Jones and Mr Bayne have said effectively in relation to the bill itself that you see giving the whole parliament the opportunity to have scrutiny of this process rather than just one person as being of benefit to the overall process as far as declaration of a marine zone.

Mr Jones: I think that an illustrative example of that was the mandatory criminal conviction issue on the Great Barrier Reef. Obviously on balance it would appear that it was an unintended consequence that ordinary Australians were receiving mandatory criminal convictions for having a fishing line in certain areas of the Great Barrier Reef. That is not saying that is right or wrong; it is just the fact that it was clearly an unintended consequence—

Senator COLBECK: So all sets of eyes effectively looking at something—

Mr Jones: The reason that that issue is now not an issue is that there was a review mechanism. We believe that the minister has the capacity under the current regime to make an outcome—for that matter, any minister of any government—that is the end of it. There is no review mechanism after that, apart from what happens at the ballot box, I guess.

Senator COLBECK: Mr Bayne?

Mr Bayne: I agree with him. I also do believe that if it had been given the opportunity to have the scrutiny that it should have had it would not have ended up costing the taxpayer what it effectively did. The sum of \$10 million was the original amount put aside for restructure assistance or exit assistance for business because of what they did, and that has ended up costing well over \$200 million. It demonstrates to me that the process needed more people looking at it from different areas. That was sadly lacking and we are concerned that that will happen again.

CHAIR: When did this take place?

Mr Bayne: The result over the Great Barrier Reef Marine Park? It was 2004. That is up for review every seven years.

CHAIR: That was under the Howard government?

Mr Bayne: Yes. We are not here to argue politics.

Senator COLBECK: We have heard a lot of evidence this morning—and I think it is generally accepted—that declaration of marine parks is not necessarily about protecting marine stocks or fish stocks. I think that is an accepted argument as part of this overall process. But it appears to me that a lot of the justification for the success of marine parks is about fish stocks. Would you care to comment on that as an observation? We hear that the coral trout numbers are up in a certain area but, as we have had evidence this morning, we have had very, very good fisheries management regimes here in Australia and so if we need to deal with fisheries issues we should deal it through a fisheries process, and the marine planning process is to deal with other elements of the marine environment, perhaps also providing some benefit to fisheries as well.

Mr Bayne: Exactly. The process that we are undergoing here seems to be bent on controlling fisheries regardless, when in fact the Australian Fisheries Management Authority is recognised as one of the best fish management authorities in the world. We have the most highly regulated and least productive fishery in the world as it is largely because of the regulation of it, as the marine biologists and scientists will say to you. So we believe that this is really not much more than a feel-good process; look at what we have done and everybody get out of this, so that we cannot actually see what is happening. Being a regular user of the Great Barrier Reef and areas beyond it, we just sit there and watch this and look at the areas that we are not allowed to go into—or not allowed to utilise as should be utilised in my opinion—for absolutely no logical reason. We have such a stringent fisheries management policies at both the state and federal levels because we also have bag limits, size limits, closures and all those things available to us at a state level to protect the fishery and also the Australian Fisheries Management Authority on top of that that looks after all the Commonwealth waters. We have a very well protected fishery and a very good resource.

CHAIR: You say that this is about a feel-good process. I suppose this is a very important point. It does not actually go to the reason why we have got this committee looking at the legislation, but you say that it is a feel-good process and there was no logical reason for it?

Mr Bayne: In many cases, yes. In many cases I think that has been demonstrated by the—

CHAIR: If you have not spoken to the CSIRO and you have not looked at the science on this, how then do you make these comments? How do you then—

Senator COLBECK: The CSIRO are not the only scientists—

Mr Bayne: CSIRO are not the only science available on this. I have spoken to many different people on it. That is issue number one. Issue number two is we have heard from people like Dr Diggles and those sorts of people who are not only marine biologists, they are also users of the resource and users of the area. I am a practical person; I run a marine business and I use this area on a regular basis. I have a lot of documentation on the scientific issues that affect this area.

CHAIR: If you have lots of documentation would you like to maybe give us a list of the documents?

Mr Bayne: I will gladly provide you a list of the documentation, copies of it and electronic copies, absolutely.

Senator COLBECK: I have asked a question which Mr Baynes answered. I was interested in Mr Jones's response to the same question.

Mr Jones: As I think I alerted to in my opening remarks, there has been a large focus on fishing and whether fish can or cannot be caught and the health and so on, but our view is that the bioregional planning process also provides two wonderful opportunities to also address the interactions between environmental management, social dependencies—particularly in regional communities—and the economic dependencies those communities have on the waters as well. We think that is a really important aspect that should be getting a lot more air time, consideration and review.

The second issue that we think is not getting appropriate review is the management of high-risk activities such as oil and gas and shipping in some of these very sensitive marine areas, bearing in mind that our industry is astounded that in this day and age that events like the *Shen Neng* and the *Pacific Adventurer* and what happened over in the west are happening in our waters. It is a tragedy. Clearly this process provides the perfect opportunity to do something about that and yet, as I said, we seem to be fixated on whether or not we can catch a fish.

Senator SIEWERT: I have a series of questions around the science. I hear what you are saying about the science. Not during this inquiry but we have also had a lot of evidence or a lot of people talk to us about the

science and the value of marine protected areas increasing biodiversity, not just fish stocks. I am not just interested in fish stocks, in marine protection; I am interested in marine biodiversity. That is what they are trying to pick up, as I understand this process. You talk about the science and I appreciate the science you are talking about around risk management and water quality. But there is also quite a lot of work that is being done about the value of marine protected areas in terms of marine biodiversity. Have you evaluated some of that? Have you looked at the work that was done on the Great Barrier Reef and the comments on the coral trout? That research looked at other things besides coral trout. Have you looked at that work and the role of marine protected areas to look at a whole lot of species and the way they interact in terms of marine biodiversity?

Mr Jones: Being an industry organisation a big part of I suppose the context and the view that we bring to the review of that sort of information means that the answer is, yes, we have looked at that. We also look at how our industry and those regional communities adjacent to those areas can continue to thrive and prosper as well. We believe that there is another level of sophistication which can be applied to those management regimes which will not only increase the value of the environment but also the industry and the health of those regional communities. I guess that is one of our big complaints about this process. We do not believe that those elements have been given appropriate air time through these sorts of assessments. It seems to be almost treated in silos, whereas we are dealing with a complex interaction and we think that there should be a more holistic approach.

Senator SIEWERT: I have been very involved in the past in marine protected areas, et cetera, in Western Australia and off the coast of Perth itself. I have to say I do not share your confidence in the management practices, for example, in commercial and recreational fishing off the Perth metropolitan area and the mess that we are in quite frankly right now. That has been a political process because people have not been listening to the science there. How do you see politicising this process benefitting management when there is no doubt about the fact that it has been a political process with lobbying going on because people have not wanted to have more control over some of the fishing practices there.

Mr Jones: I think from our perspective what we see as being a failing of the process—

Senator SIEWERT: It has been what?

Mr Jones: It has been a failing of the process. The bill that is before the Senate that this inquiry is looking into in our view will not further politicise the process because the process is highly politicised right now. I cannot imagine how you could make it more political, to be honest with you. In our view it will provide another level of review to hopefully—

Senator SIEWERT: Politicisation?

Mr Jones: No, well, another level of review, I guess at the highest court in the land if you like, to air the various dimensions to the argument. At the moment that mechanism is not there.

Senator SIEWERT: But it has been and it is. Are you telling me that the process in Western Australia for example has not been a political process and—

Mr Jones: Absolutely not. I am saying—

Senator SIEWERT: and you are saying that it is not resolved—

Mr Jones: it has been a highly political process.

Senator SIEWERT: It has been ignoring the science.

Mr Jones: It has been a highly political process but in terms of the bioregional planning process which is on foot now we are saying is that if there is an ability for a review mechanism which currently does not exist under the bioregional planning process that that will be a good thing.

Senator SIEWERT: I am sorry, it does happen now. We have currently just entered into it for the south west marine planning process. That is a review process of the draft.

Mr Jones: Once the determination is made by the minister—

Senator SIEWERT: Do you want another process?

Mr Jones: Yes.

Senator BOSWELL: The minister has the ultimate power—one person, one person.

CHAIR: Do you have further questions?

Senator SIEWERT: No, I do not.

CHAIR: Thank you very much for taking the time to give us your views on this important issue.

Proceedings suspended from 12:37 to 14:03

KINDLEYSIDES, Mr Darren, Director, Australian Marine Conservation Society

SMYTH, Mr Chris, Healthy Oceans Campaigner, Australian Conservation Foundation

WELLBELOVE, Mrs Alexia, Senior Program Manager, Humane Society International

ZETHOVEN, Ms Imogen Hilary de Mortimer, Director, Pew Environment Group

Evidence from Mr Kindleysides was taken via teleconference—

CHAIR: I declare this session open. I welcome Humane Society International, Australian Conservation Foundation, Australian Marine Conservation Society and the Pew Environment Group. You have all made submissions. Does anyone have any changes or amendments to their submissions?

Ms Zethoven: No.

CHAIR: If not, would you like to make a brief opening statement?

Mr Smyth: Yes, we would.

CHAIR: Just before you do that, Senator Colbeck has a document to table.

Senator COLBECK: Dr Diggles referred to a document prepared by the GEF, Global Environment Facility, earlier in the day which talks about lessons learnt and good practices in the management of coral reef MPAs. I just thought it might be of value to the committee so I would like to table it.

CHAIR: Will someone move that that document be tabled? All those in favour? I declare it tabled. We have four statements. Mr Kindleysides, if you are speaking, I would appreciate if you could say your name for Hansard. Mr Smyth, you can go first.

Mr Smyth: On behalf of my colleagues and myself we are very grateful for the committee giving us the opportunity to present some ideas about the Environment and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011.

I plan to make some general remarks on the bill and then pass across to my colleagues, who will make some more specific comments about key elements of the bill. Since making our initial submissions to the inquiry we are now aware that the bill has been amended and, rather than have the intention of just making bioregional plans disallowable, it now also targets the Commonwealth reserve declaration process and is a legislative instrument that should be made disallowable in either house of the parliament. We are aware that the committee has invited additional supplementary submissions on that amendment and we are very happy to submit further arguments by the due date, which I think is 30 May 2011.

Just to some general remarks about the bill, if it were passed in the three key stages of the creation of Commonwealth marine reserves, that is bioregional plans, reserve declaration and then reserve management plan, our understanding from the bill would be that each of those three stages would be disallowable. There is a lack of clarity around the bill as to whether, in fact, that is still the intention of the proponent, but that is something that we can hopefully clear up during the hearing today.

We do not believe that the amendments proposed in the bill are warranted. Since the creation of the Great Barrier Reef Marine Park by the Fraser government in 1975 the Commonwealth government, which includes coalition and Labor governments, has created quite a number of marine reserves in Commonwealth water, which is the area 5½ kilometres offshore and out to the exclusive economic zone boundary, and they have done that to increase protection of our oceans, which are the most diverse in the world. They have done that to satisfy international obligations and so the Convention on Biological Diversity certainly obligates nation states to develop and establish networks of marine reserves. They have also done it to implement the national representing system in marine protected areas which has been signed on by all state and territory governments and the Commonwealth, and to also bring ocean protections in line with what we have been doing on land for the past century, that is to create national parks to protect wildlife. In that time coalition governments have established many of those Commonwealth marine reserves. The most recent one is when they created the South East Marine Reserve Network, which was declared in 2007. At that time disallowance was not required and it was something

which certainly the coalition government did not need. In fact, in the past coalition governments have resisted the call for disallowance.

When the EPBC Act was being established there was certainly a bit of debate about whether, in fact, these processes should be disallowable, and in the end the EPBC Act came forward and it was not a disallowable instrument. Also with the Legislative Instruments Act 2003, which is the act which exempts the declaration process from disallowance, there was some debate about whether, in fact, the declaration process should be disallowable. Again, the Howard government decided not to do it.

CHAIR: Could you repeat that, please?

Mr Smyth: The Legislative Instrument Act 2003, section 44. There is a table in section 44 which lists those sections within various bits of Commonwealth legislation which are exempt from disallowance.

Also, at the time Senator Ian Campbell initiated the use of section 176, the bioregional plan section, to provide a bit more legislative oomph for implementing their oceans policy and also implementing bioregional marine plans. When that change was being made there were also a number of amendments being made to the EPBC Act and one of those was to state, very clearly, that the bioregional plans were not legislative instruments and so, in practice, they were not disallowable.

The initial bill tried to make a non-legislative instrument largely a policy statement, which is the plan, disallowable. This has been recognised by the proponent's amendment and we acknowledge that, but it is now a little unclear as to whether the disallowance of plans is still something in the minds of the proponent. Again, as I said, we would like to get some clarity on that.

There has clearly been a good number of submissions made to the inquiry and many of those have focused on the rationale behind marine bioregional planning processes, but also the merits of marine reserves. Our submissions are generally about the merits of the legislative amendment.

The key points that we would like to make is that we believe that the disallowance, as proposed, would be a very blunt instrument dealing with marine reserves and declarations because if the disallowance proceeds then that is the end of the matter. It is not something which you can amend. If it is disallowed by one of the houses then that is the end of the process and the government of the day would need to decide what they do pursuant to that. It would also be a significant drain on public funds which have been invested into the bioregional and planning processes over a number of years. It roughly costs \$8 million to \$10 million each year to drive the bioregional planning process, and that includes significant stages of public consultation, public information and so on. It is a long, complex and inclusive process, but there are opportunities along the way for people to be consulted either at the release of the draft plan, as we have just seen recently in the south west; at the stage when the declaration of reserves is being notified; and also at the stage when management plans which are currently the only disallowable instrument in the process when the management plans are presented to parliament. It is very science based, but it is also taking into account the social, economic and cultural values of regions, and compromises are made to minimise the social economic impacts while maximising the level of protection.

We would also be concerned that because people in communities and stakeholders have been investing an awful lot of their time and resources into the current bioregional planning processes and the ones that will be going on over the next year or two, we believe that there would be a loss of faith in the process if, at the end of that process, when all the conversations have taken place and all the opportunities have been exhausted, that then another stage is initiated which basically means that parliament could actually reject what the wishes of the community are.

It would also create uncertainty and delays for stakeholders. We are often hearing from stakeholders that they would like to see the process completed and completed fairly promptly because, again, it creates a great deal of uncertainty about where they are going in terms of their business investments and so on. It would also delay or undermine our meeting of international obligations under the Convention on Biological Diversity where we are expected to establish a network of marine reserves.

It would also establish an inconsistent approach to the way we deal with oceans protection and oceans extraction. A quick read of the Fisheries Management Act would suggest that fisheries management plans are not disallowable, nor are releases for offshore petroleum, but we would be starting to establish parliamentary disallowance for protection when, in fact, there may be other areas of extraction which, again, do not get that same parliamentary oversight. This is something which we will provide some more detail on when we submit our supplementary submission.

I will now pass over to Ms Zethoven, who will provide more information about some of the marine reserves of the past.

Ms Zethoven: Thank you for the opportunity to speak to the committee today. Before addressing the key points in the Pew Environment Group's submission I want to acknowledge the marine legacy created by the coalition. I have an excel spreadsheet here that I can table to the committee. It points out the history of marine reserve creations under both the Fraser government and the Howard government.

In 1982 the Fraser government established Australia's first marine reserves that provided full protection from oil and gas drilling, commercial fishing and recreational fishing. These were the Lihou Reef and Coringa-Herald reserves in the Coral Sea. The Howard government built on Fraser's legacy. Under the leadership of Senator Robert Hill, a large, highly protected reserve of around 57,000 square kilometres was established for Macquarie Island in the Southern Ocean. Dr David Kemp established a slightly larger reserve for Heard Island and McDonald Islands, a sub-Antarctic group of islands in the Southern Ocean. Several other significant reserves were established during the Howard era; however, the crowning achievement was the establishment of the world's largest network of highly protected areas within the Great Barrier Reef Marine Park. This result has received many international awards for setting the highest benchmark for science-based marine conservation. That is something that Australia can be very proud of. Over 115,000 square kilometres, or one-third of the Great Barrier Reef Marine Park, was set aside from any form of fishing—and, of course, oil and gas was banned back in 1975—in order to conserve the biodiversity and enhance the resilience of this globally iconic ecosystem. Looking back, the Fraser and Howard governments together have established over 723,000 square kilometres of marine reserves, including 237,500 square kilometres protected from any type of extractive activities. This represents 33 per cent of Australia's total marine reserve area. Although the job of protecting Australia's vast marine environment remains to be completed, the coalition's marine legacy is very significant and something to be proud of.

The Howard government also passed the EPBC Act, which established a higher benchmark in Australia for managing our environment at sea and land. It allowed for the creation of bioregional plans, set rules for sustainable fisheries and established a list of protected marine species. Along with the oceans policy and fisheries reform securing our fisheries future, and the Queensland East Coast Trawl Fishery that Senator Boswell would know much about, the Howard government provided real leadership in the area of marine protection and we look forward to a resumption of this progressive approach in the future.

The Pew Environment Group's submission focuses on the matter of disallowance of bioregional plans, in response to the original private member's bill by Senator Colbeck. It does not deal with the amendment to the bill to disallow marine reserves. I just want to note here that it does not disallow terrestrial reserves. My organisation will, therefore, prepare a supplementary submission, as Mr Smyth has pointed out, by the due date of 30 May to respond to the amendment targeting marine reserves in particular.

The claim is that vesting the power of approval solely in the environment minister for bioregional plans and marine reserves is equivalent to absolute power. This is a claim made in the explanatory memorandum. That is an interesting comment, yet individual ministerial responsibility is a constitutional convention in our Westminster system. It is fundamental to our system of government. The minister must be accountable for his or her actions and take the accolades or the blame. That is how our system works. It is extraordinary to claim that the system is equivalent to absolute power. Ministerial responsibility means that a minister must closely scrutinise his or her department. Surely one would not want to reduce this power of scrutiny.

Bioregional plans are information documents. Their purpose is to assist the minister with decision making under the act. It does not make any sense for parliament to disallow an information document that assists the minister to make informed decisions.

The introduction of a disallowance power over both bioregional plans and marine reserves would add a major new element of uncertainty into both processes. Under the EPBC Act both the development of a bioregional plan and marine reserves involves 60 days of public consultation. Under the current environment minister, Tony Burke, this period has been extended to 90 days for bioregional plans. There has been additional stakeholder consultation outside these formal processes. Adding a power of the parliament to disallow a plan or reserve after extensive community consultation dramatically reduces confidence in the process and dramatically increases uncertainty in the delivery of the final outcome. Uncertainty is the least desirable outcome of public policy and process.

The explanatory memorandum states that there is no financial impact as a result of the passage of the bill. However, if a plan or reserve is disallowed the department would need to prepare a new plan or new reserve and release it for public comment. This would be a costly exercise. Indeed, the budget for 2011-12 contains a \$9.7 million allocation for the development of a national marine reserve network which does not factor in the costs in time and resources devoted to the process by non-government stakeholder groups. For reasons to do with

increased uncertainty, increased cost and the importance of individual ministerial responsibility so integral to our Westminster system, the Pew Environment Group does not support the EPBC Amendment (Bioregional Plans) Bill 2011. We therefore urge the committee to reject the bill as amended. Thank you for the opportunity to present to you today.

CHAIR: Ms Wellbelove.

Mrs Wellbelove: I will pass to my colleague, Mr Kindleysides, on the phone.

CHAIR: Mr Kindleysides.

Mr Kindleysides: Thank you for the invitation to participate in the hearing. We are an organisation that has been working actively as a stakeholder in the marine bioregional process which is currently underway. We have a number of general concerns about the amendments proposed.

CHAIR: I am sorry to interrupt, but we have had a bit of a problem with the links coming in. Could you slow down a little bit so that we can hear you better?

Mr Kindleysides: Indeed.

CHAIR: It is not your fault. We have had this problem all day.

Mr Kindleysides: I am also struggling to pick up some of the questions from the floor as they come. The Australian Marine Conservation Society has a number of concerns about the amendments to the EPBC Act proposed by the bill. I will not dwell on those because my colleagues have covered many of them. In summary, we believe the amendments would basically add an additional, unnecessary and potentially costly layer to a process which is actually working adequately and that, rather than improving the marine bioregional planning regime, the amendments risk undermining it by overriding the outcome of the consultation process. It is certainly increasing uncertainty for industry and stakeholder groups.

I would like to focus my comments on the question of the adequacy of the consultation under the current marine bioregional planning regime, because it seems to be an important aspect of the committee's deliberations over this bill. I wanted to stress that we believe, indeed advocate for and defend absolutely the right of the public and groups that represent the public to be fully consulted over the development of marine bioregional plans and reserves. Public consultation is certainly an essential element of the marine planning regime and, indeed, of any planning regime.

I should start by saying that the consultation processes that are built into the marine bioregional planning process are not perfect and there is certainly room for improvement. For example, engagement with traditional owners could be improved and the Hawke review, itself, acknowledges that there are needs for improvement in the provision of information to support the consultation procedures and transparency. That said, I do not believe the consultation process is broken. I see it as being adequate and sufficiently robust. I am sure the department appearing later this afternoon can talk through the details of that consultation process, but it does include substantial periods of public consultation as part of that decision making process. There is a statutory consultation over the draft marine bioregional plans that we have just seen with the first release to the south west, but that itself follows a process of examination of scientific and socioeconomic information, and further broad stakeholder engagement and expert input to lead to that point of being a draft plan. The department itself has built in additional non-statutory rounds of consultation, such as regional assessment and stakeholder workshops that have been held around the country to inform the development of those draft plans of which many of those, including ourselves, that have made submissions to this committee have been involved in.

I believe that if the bill were passed the potential for disallowance of plans or reserve declarations would then arise after what has been quite a long and inclusive process involving various stages of consultation and expert input. I think once stakeholders and the community have a chance to have a say through that formal consultation process, including representations to ministers, local members and so forth, then it is reasonable to expect that the final product, the plan, including the reserves networks, would be implemented rather than disallowed.

I think it is fair to say that no stakeholders, including ourselves, can really have the expectation that we are going to be 100 per cent happy with the outcome of the bioregional planning process and the outcome of the consultation process, but I do think it is reasonable that we have an expectation that there will be an outcome at the end of that process. Of course, the flipside with disallowance is that a vote in either, not both, house potentially overrides the plans being built on a solid scientific basis and informed by a significant amount of consultation. If there is a chance that at the end of this process plans are thrown out then I think there is a real risk that will undermine public confidence in the process and that there will be a loss of faith in the process. It certainly may deter, rather than encourage, engagement in that consultation process. As has been noted, I think it builds in the risk of uncertainty for all users of the marine environment.

Finally, I would say that in respect of the views on the adequacy or not of the current consultation process, the disallowance is something of a blunt tool, a yes or no in either of the houses. If an objective of this amendment to the EPBC Act is to improve consultation, it is not clear how this amendment would lead to that improved consultation. Indeed, one of the witnesses this morning, I believe it was Andrew Macintosh, suggested that there may be a need to shrink the number of consultative stages if disallowance were introduced. I certainly think that would be a potential risk, but of course the risk is the waste of resources, time and investment that is put into a process which ultimately could fall over. Thank you.

CHAIR: Ms Zethoven, do you have a document that you want to table?

Ms Zethoven: Yes.

CHAIR: Could you table that now?

Ms Zethoven: Yes.

CHAIR: I will move that that tabling be accepted. It has been so done. Ms Wellbelove.

Mrs Wellbelove: Thank you for the opportunity to address the committee. I would like to take the opportunity to build on comments my colleagues have already made, so I will try not to repeat as many of those as possible, but obviously we are in total agreement with those.

The Humane Society International has been an active stakeholder in the marine bioregional planning process to date that is currently underway and our particular interest is ensuring the critical habitats, the feeding and breeding areas, of marine species are protected within current and future marine reserves.

We consider that stakeholder consultation is of crucial importance within the marine bioregional planning process and although as noted by my colleague that those processes are not always perfect, we consider that the proposed amendment bill does not deliver any improvement to that process. Instead we believe that the bill creates or adds unnecessary bureaucracy and increased uncertainty for a broad range of stakeholders which will result in delay and lack of much-needed protection for our marine environment. Only recently there has been a thorough review of the EPBC Act undertaken by Dr Allan Hawke. We are not aware of any submissions made to this process that recommend the inclusion of amendments along the lines of the proposed bill, nor are there any recommendations in the Hawke review, as it is known, that suggest the necessity of making the marine bioregional plans or reserve declarations a disallowable instrument.

The Hawke review, however, does recommend changes to improve public consultation and transparency of decision making in relation to all aspects of the act's implementation, so that is not simply limited to bioregional planning but to other areas under the act and we would support that view as set out in the Hawke review. We agree that there is a need for defined criteria and transparency for all decisions made by the minister under the act and believe this should not be limited to marine bioregional planning and, of course, it should be based on ecologically sustainable development principles and the precautionary principle.

Simple parliamentary veto by one chamber of the plans or reserves would not allow this transparency; in fact, we believe the opposite to be true. We support the consultation processes undertaken and, as noted, although these are not perfect we have all engaged in these in an active manner across the whole of Australia.

Amendments to the act or procedures within the department to ensure more information is published more regularly would give stakeholders confidence in the processes. The proposed bill we do not believe would achieve this. We therefore believe that the proposed amendments contained within the bill under scrutiny and those additions since proposed, which we understand we will have the opportunity to respond to by the end of the month, do little to improve transparency or consultation and instead will increase uncertainty for stakeholders and, as already noted by my colleagues, increase the costs as years of work is potentially sent back to the drawing board. We therefore believe that the bill is not the appropriate way in which to provide increased certainty or transparency and we urge the committee to reject the bill. Thank you.

CHAIR: Thank you. On the document that has been tabled that goes back to 1982, is that the first reserve that was established?

Ms Zethoven: No, the Great Barrier Reef Marine Park was the first reserve established. This is looking at the first highly protected reserve that was established. The Great Barrier Reef Marine Park is mentioned, but down in 2004, when on 1 July the new zoning plan was implemented.

CHAIR: During the period of the document that you have outlined was there any debate about disallowance in any of these issues? Was that a feature of the political process of getting these parks and reserves into place?

Ms Zethoven: To the best of my knowledge this is the first time there has been a public debate about it. Of course, disallowance was around before the EPBC Act, which came in and was passed in 1999. As my colleagues

have pointed out, the Hawke review looked at the act, took submissions and, again according to the analysis done by my colleagues, there were no submissions that were advocating for the disallowance of marine reserves or bioregional plans, so this is the first time it seems to have happened.

CHAIR: So when was the Hawke review?

Mrs Wellbelove: That was published in October 2009. There were 71 recommendations, but none of those referred to disallowable instruments relating to this matter.

Senator COLBECK: You focused very much on cost in your submissions, but that circumstance only arises in the instance of a disallowance actually being moved. The figure of \$8 million or \$9 million has been mentioned quite a few times. At the moment, with the current \$9 million budget there are four bioregional plans being undertaken around the coastline, so it is a significant process that we are currently going through. What cost democracy? What price do you put on democratic process? Again, I make the point, it is only in the circumstance of a disallowance motion being moved that there is any additional cost.

Mr Smyth: In terms of democracy, there have been comments that Mr Kindleysides and Mrs Wellbelove have made about consultations and that is also a very important part of the democratic process. It is not just about an end point in parliament, there are actually an awful lot of other processes that we need to put in place to uphold democratic process. We believe that those processes which are currently in play, and obviously as Mr Kindleysides has said, there is need for some improvement but we do not believe that there is a need to go to a point where there is that parliamentary oversight. I acknowledge the fact that not all reserves might be put up for disallowance, but the fact is that it is there and still creates uncertainty for people as they go through the process.

Senator COLBECK: I take your point in respect of that. The current consultation process has been described to me by a member of the Pew foundation as a black box process. The actual consultation process is one of the things that has concerned me as part of this process, and we have discussed it with some of your organisations. We have also interrogated it to a certain extent through the parliamentary process through estimates, but that is as it has been described to be to me by a representative of the Pew foundation, which to me, as a parliamentary representative, comes as a concern. Whether that concern is coming from an ENGO or the user sector, it is concern from whichever perspective.

Ms Zethoven: I would like to put on the record on behalf of my organisation that we have a lot of respect for the public consultation process. Obviously at the very beginning of a process it can seem confusing to a lot of stakeholders because a lot of the work is done internally within the department: collecting information; analysing the information and putting together regional profiles, so it can look like a black box early on, but it then moves into a much more transparent phase where public profiles are released and available for public comment, draft plans are prepared, stakeholder workshops are being held and then, of course, it is released for public comment.

Senator COLBECK: What about access to all the data that informs those processes that you are talking about?

Ms Zethoven: There is a lot of data on the department's website. You can access a tremendous number of reports that are listed in the resources pages under each of the regional areas.

Senator COLBECK: So you have changed your view about the process and how it works?

Ms Zethoven: I think one of the easiest things for anyone outside of government to criticise is public consultation. I have been a witness to a lot of people criticising the Great Barrier Reef Marine Park Authority for poor public consultation and, in fact, they went to extreme lengths to consult effectively with the public. They received 33,000 submissions as a result. It is very easy to make that allegation when you are on the other side of the fence, which I am not, but putting another hat on for a moment, it is difficult to run a community consultation exercise that every single member of the public would be happy with. It is not going to be possible. As long as you make sure that you make key information that is of significance available on the website, that you release information in a timely manner and make it available for a reasonable period of time for people to comment on and then have stakeholder discussions, then that is a fair and reasonable process and that is what is happening.

Mr Smyth: Just to add to that, I have certainly heard of the reference to the black box, but not from the Pew foundation. I think the black box reference may have been from other stakeholders in relation to the Marxan analysis which the department has been using to develop proposals for protection and so on which at some point goes into a computer and the computer runs out various options. A lot of that information is confidential. Certainly a lot of the fisheries catch data and so on is very much confidential and is not something which any of the stakeholders get access to, but in the release of the south west plan the department has put up on the website a number of interactive options to actually explore the values of various places. There are various report cards and so on. It is certainly worth looking at that particular website and I think it opens up a new phase of public

information which we have not had in the past. The department has been evolving over the last number of years in the way it actually presents the information and provides consultation, but again that is something which the department can follow up in their presentation later on this afternoon.

Mrs Wellbelove: I can add to that regarding the EPBC Act review. I understand that the minister's current intent is to have more information published more regularly as part of the EPBC Act processes, so that could possibly deal with those sorts of issues for many stakeholders in the future. We see that as an improvement and a good development if that happens.

Senator COLBECK: Ms Zethoven, the same official of Pew actually welcomed this legislation when it was first announced. When did Pew change its mind?

Ms Zethoven: Pew Environment Group has not changed its mind. We have a consistent view that this proposed private members bill by you is something that we do not support.

Senator COLBECK: It was enthusiastically welcomed by me in a phone call to one of your people when it was first tabled. That is fine, if you have not changed your mind then you have not changed your mind, but that is as it was expressed to me.

Ms Wellbelove, you talked about breeding areas and feeding areas being protected as part of this process and we have already heard a lot of other evidence today, including from Ms Zethoven, about the strength of our fisheries management. A lot of those things are actually managed by our fisheries management processes through seasonal and locational closures. Why do we need to double up?

Mrs Wellbelove: Some of them may be managed by seasonal closures, but many more are not. I do not see it as a doubling up. For many specially listed or protected species, if you are not protecting their feeding and breeding areas then you are not going to get the recovery of that species, and most of them have recovery plans as part of their listing under federal environmental law.

Senator COLBECK: Species, such as?

Mrs Wellbelove: Species such as the Australian sea lion, albatross species and numerous other species that I could refer you to. Southern bluefin tuna, for example, is a listed species.

Senator COLBECK: Yes, but they are protected and managed significantly under fisheries management and their take is highly restricted; in fact, it is probably one of the most restricted fisheries that there are around and in a number of different forums, so how does a huge spatial closure change that, given their propensity to move?

Mrs Wellbelove: You can think about some of the whale species, cetaceans, such as blue whales or southern right whales. We have known areas where they feed and breed and those areas do not tend to change from season to season or year to year. They might fluctuate slightly, but by having those closed areas when it is using fisheries management you can help protect those. On a long-term basis you can also protect them through marine reserves because we know where those are. There are important areas such as in the south west at the moment at Perth Canyon. By protecting those places you can make sure that the future of that species is more assured.

Senator COLBECK: Again, the whale species is protected; you are not allowed to take it. What impact does a spatial closure have?

Mrs Wellbelove: You are protecting the values of that area within the spatial closure. Just because the whale is protected does not mean that, for example, the area in which they feed is protected, so that can still be harvesting the prey species or whatever they are feeding on, or the area in which they are breeding. If that is being affected by other activities then just by protecting the animal you are not actually protecting that area.

Senator SIEWERT: I was discussing this morning with some of our other witnesses the issue around politicisation of the process. We have been talking about the consultation process in terms of people's engagement. The point that was made this morning was that the consultation process is already a political process. Having said that there are also comments, and one of my concerns if we go down this route of making it a political process is people would opt out of the consultation process and just engage with their local members or their various political representatives and then the bunfight would really happen in the parliament rather than a proper consultation process. Do you have a view on that? I know all of you have been very involved in the consultation process over the years; what is your experience in terms of the consultation and politicisation of the process and what this new process would do?

Ms Zethoven: There is no doubt that the development and making of a marine reserve can be a contentious process and that people will use their rights in a healthy democracy to speak to their local members, to speak to other ministers of the Crown and of course the minister with responsibility. The thing about this private members bill is that it shifts the weight from a public consultation process into a political process, and the other element of

it is that it specifically targets marine reserves. By doing that, it makes it obvious that it is a political process. If it was about fairness, reasonableness, democratic rights and so on in relation to reserves it would apply to all reserves, but clearly only marine reserves have been targeted and therefore it lends itself very easily to an interpretation that there is a political agenda here.

We have faith in the public consultation processes and in people's ability to participate fairly and with respect in that process. I think that by shifting the burden into a political process it makes it a more fractious, more divisive and more contentious process, which is not good for democracy.

Mr Smyth: Just to point to—

Senator BOSWELL: You cannot say you cannot push your problems to a member of parliament because it is not good for democracy.

Senator SIEWERT: That is verballing the witness. The witness did not say that.

CHAIR: Senator Boswell, I will come to you. You declined to take up the offer at the time that I offered it to you. Senator Siewert has the call, so do not interrupt and we will try to keep it that way for you.

Senator SIEWERT: Mr Smyth, you were going to comment.

Mr Smyth: There is that risk that if it becomes an even more intensive political process which ends up being more of a lobbying exercise rather than a community consultation inclusive program then it is quite possible that we may end up with a few key stakeholders fighting it out. There are obviously going to be issues around power, influence, imbalances and so on, which again may come up with unfortunate outcomes rather than the sorts of outcomes that we want if we have more people involved in the process getting informed, engaging with their local members of parliament and so on. If it comes down to just two or three players then the outcome could be quite different to what we would like to get in terms of a more inclusive process.

Senator SIEWERT: Senator Colbeck touched on what marine protected areas do. A lot of the evidence that we received this morning was framing the argument around protection of fish stocks. I think that is a fairly narrow interpretation of what marine protected areas do and we have not had anybody else properly explain what marine protected areas do, so I would like to ask you to explain what your view of marine protected areas are so that we have that on record. We already have other people's opinion on what you say marine protected areas are.

Ms Zethoven: I will go first. Marine reserves are about the conservation of the biological diversity within the reserve in the simplest possible terms. Obviously fish are part of that, but there is a huge array of other species. There is the benthic ecosystem, water column and species in the top layer that are vital in terms of abundance for the health of the whole system. It is about protecting the food chain. What we have seen is that when marine reserves are created you get a major increase in the biomass of species within marine reserves and that increases the ecosystem resilience of the whole area that is being protected.

We have circumstantial evidence—not a causal link—that in the Great Barrier Reef Marine Park we have had less crown-of-thorns starfish outbreaks on the green zones that were established in 2004. That is a very interesting association. It shows that marine reserves are not just about seeing a twofold increase in the abundance of coral trout, but they also protect the entire ecosystem. They make it more resilient to threats such as crown-of-thorns starfish plagues. They have a very broad ecosystem wide benefit, and one of the problems is that often these debates get entrenched in discussions about particular fish species. The benefits are much wider than that.

Mr Kindleysides: I can follow on from that. Marine reserves are internationally recognised as a proven tool for conserving marine biodiversity and that is their primary function, biodiversity conservation, and in fact biodiversity restoration is required as well. It is very fair to say that they are not intended to be an alternative to or a substitute for good management of a marine environment. They are not intended to be an alternative to good fisheries management. They are complementary to and need to be complemented by measures to tackle things like pollution. The Great Barrier Reef Marine Park itself is an excellent example where you have a network of zones within that park which is focused on protecting the biodiversity. But, of course, one of the major threats to the future biodiversity within the Great Barrier Reef is pollution from land, so we have now seen additional legislation introduced to tackle that threat.

Marine conservation is a tool box and one, if not the most proven, tool is marine protected areas, but certainly it is not the only tool and in fact there is a whole range of measures that need to be introduced around that.

It is also worth saying that the science is pretty clear in terms of the effectiveness of marine sanctuaries, not just in terms of protecting marine life and some of the other benefits to fisheries and science, for example, to improving the resilience of the marine ecosystem. There has been a whole raft of papers published that would

support that and in fact perhaps we can table a list of, or a resource of, those publications to the committee as well.

Senator SIEWERT: If you could table that list then that would be useful. You have actually led into my next question because this morning one of the other arguments that was being put was that focusing on marine protected areas is the wrong way around; it is a risk assessment process—I am paraphrasing here, not quoting directly—that there is not a risk assessment process undertaken and, in fact, it is the processes that have had more adverse impact on the marine environment rather than spatial closures.

Mr Kindleysides: It would be unfair to say—and I am not talking about the substance, but in terms of the risk assessments—that those have not been undertaken as part of the marine bioregional planning regime. I mentioned the regional assessment stakeholder workshops that, again, many of those that have made submissions to this committee were part of. One of the core roles of those workshops was sitting down and looking at what the values were within each of the marine bioregions, but then what the risks were to those conservation values and what the scale or scope of those risks were. There is rather a large and fairly integral process that it goes through in ticking and cross referencing conservation values to those risks, so it would be unfair to say that there is not a risk assessment built into the actual marine bioregional planning process.

CHAIR: Mrs Wellbelove, did you want to add to that?

Mrs Wellbelove: Yes. I would like to make a very quick point to say that I think it is useful, at this stage, to compare marine bioregional planning with what occurs on land. In some cases you need to protect a representative part of our land from extractive uses or obviously there are different zones that you can give, but it is exactly the same in the sea; it is just harder to visualise it because we cannot see it as well. It is a different approach, but you need to make sure that parts of our oceans are protected so that they can support the processes and the ecosystems within them.

Senator BOSWELL: Ms Zethoven, I understand that you place a high value on consultation and in terms of the Coral Sea being declared, you consulted with the minister, as did the Australian Conservation Foundation. There were two people consulted before the Coral Sea was declared a reserve, but no-one else was able to consult. No-one was consulted. Only two members of green groups were consulted, so you can understand why people get a bit annoyed when they were not consulted.

CHAIR: Are you asking for some comment on that?

Senator BOSWELL: My question is: does Pew still wish to see the Coral Sea as a complete no-take zone?

Ms Zethoven: Before answering that question I want to put on the record that I have written to Senator Boswell and assured him that neither my organisation nor the organisation represented by Mr Smyth next to me, the Australian Conservation Foundation, were consulted by the federal environment department over the Coral Sea conservation zone. I never got a response to the letter. The senator refuses to believe my words.

Senator BOSWELL: You conceded that you saw the minister.

Ms Zethoven: Yes, I did see the minister. It was in a meeting about whales.

CHAIR: If everyone bring the temperature down a few degrees then we will get through this. We only have a few minutes. Ms Zethoven, you have the call.

Ms Zethoven: I would like to put it on the record that, again, I have explained to Senator Boswell, in writing, that the meeting with the minister at the time was about whales. I will put that to one side because it has been around for about two years and he has refused to believe what he hears.

In terms of answering the question, the Pew Environment Group is part of a coalition of 10 organisations, all of whom are urging the federal government to set aside the Coral Sea as a very large, world-class, highly protected marine reserve to provide a safe haven for the abundant marine life within it and also to recognise its historic value, which is very significant.

Senator BOSWELL: Have you ever heard of Nomad Sportfishing?

Ms Zethoven: I have.

Senator BOSWELL: It is a very expensive way to catch a fish. It costs you about five or six grand. You fly in; the mother ship is out there; you catch maybe one or two fish; never take anything home; you may have a fish for dinner. Would you support that?

Ms Zethoven: What we support is a highly protected area in the Coral Sea. The activity is not something we have any objection to at all, but what we support is a marine reserve that is highly protected in that area.

Senator BOSWELL: Do you support a plane going out with some big hitters, getting on a mother ship, spending \$5,000 to \$7,000 for a week's fishing and having one fish meal a night?

Ms Zethoven: I would like to make the point that this could go on for a very long time and it is not pertinent to the issue of disallowance.

Senator BOSWELL: I will ask you one more question. Why do you think that catch-and-release sport fishing is incompatible with the ICUN management category, which is classified as national park protected areas managed mainly for ecosystem protection and recreation?

Ms Zethoven: It is the IUCN. The IUCN revised categories do not allow recreational or commercial fishing in Ia, Ib and II, with II being equivalent to a marine national park. We support that. Clearly, governments and non-government stakeholders around the world also support that.

Senator BOSWELL: Were you happy with the south west zone declarations that came out?

Mr Smyth: I can attempt to answer that one. We are very welcoming of some of the areas which have been protected in the south west planning maps that came out a couple of weeks ago. There are some areas for which we would still like to see high level protection, but we certainly welcome it as a very important step in getting a good conservation outcome that ensures that social, economic and cultural values are also considered throughout the process.

Senator BOSWELL: I have before me a paper from Global Environment Facility: *Lessons learned and good practices in the management of coral reef marine protected areas*. That paper it states: 'Do not oversell the potential benefits and ignore the real costs of marine protected zones.' Do you agree with that?

Mr Smyth: I think that it is very important that if you are going to establish a network of marine reserves that it is very much based on science, but also carefully considers the social, economic and cultural values where you come up with an outcome that takes all of those things into consideration. Clearly, there are going to be benefits in terms of marine reserves, but there are also going to be issues around displaced activities and the like, and they need to be dealt with in a very sympathetic way. That is something which the displaced activities policy, implemented by the Howard government, but also the fisheries adjustment policy just recently announced by the Gillard government, indicates the process by which you can actually ensure that there is a sympathetic outcome for people who are going to be affected by the transition to an increased protection regime.

Senator BOSWELL: It also states:

Other methods of restricting catch and/or effort are valuable, do not displace fishers, and may cause fewer conflicts between fishers and other reef resource users—

a lot of the marine resources and ecosystems deal with MPAs—

Without monitoring, you can evaluate neither the success nor cost effectiveness—

Then it goes on to say: 'Don't oversell them.' We have heard today from some eminent scientists that drawing lines on maps in some cases does not affect the health of the fish. The cause of loss of fish stocks is due to silting, temperature and a fair few other issues.

Ms Zethoven: One of the things that the Great Barrier Reef Marine Park Authority made very clear when it was rezoning the reef is that green zones were not the panacea; there were other things that needed to be done such as the reef water quality protection plan, such as trying to deal with climate change and such as managing tourism better. As Mr Kindleysides pointed out, it is one tool. It is a very important tool but it is not the magic bullet.

Senator BOSWELL: As far as the bill before us is concerned, I had to follow you guys around with a dustpan and mop and spend \$230 million cleaning up the mess—

CHAIR: If you have a question then put the question. I do not want political comment. I have given you a fair go. We are over time and if that is where it is heading we will move to the next witness.

Senator BOSWELL: Let me finish. The zones that are put in these maps with this big, green zone, what does the big green zone that goes right around the bottom of Western Australia achieve?

Ms Zethoven: One of the things that Professor Hugh Possingham would say, and has said to various parliamentary forums, is that when you put in place a marine reserve you get bigger fish and more fish, and so you get biodiversity benefits—to fish, to other species, to iconic species, to the whole ecosystem. Sure, it does not stop pollution coming from land or ship based pollution or climate change. One has to look at the whole suite of threats, but marine reserves are a major advance in delivering conservation protection.

Senator BOSWELL: Do you have a problem with people going to their local member and putting a position to him whether or not they can fish in zones and whether he should do something about it to represent them in parliament? Do you see that as a breach of democracy? No, it cannot be a breach of democracy because that is what democracy is all about. You referred to that in your comments. Why do you see that as being something that should be dismissed where people are denied the right of their parliamentarian to hear their views and express them in the Parliament of Australia?

Mr Smyth: We are certainly not saying anything of the sort. People are welcome to go to their local members of parliament and talk to them about the issues, and that is really what the whole process is about. We encourage local members who are adjacent to some of these regional planning processes to really encourage their constituents to get involved, learn about the process and talk to them about it.

Senator BOSWELL: But if they come—

CHAIR: I think we have spent a fair amount of time on this. We have another witness waiting. I want to thank you for your evidence and taking the time to come here to assist the inquiry. Thank you very much.

OXLEY, Mr Stephen, First Assistant Secretary, Marine Division, Department of Sustainability, Environment, Water, Population and Communities

[15.05]

CHAIR: Welcome. Thank you for coming along today. The committee has received your submission as submission 29. Do you wish to make any changes to that submission?

Mr Oxley: No.

CHAIR: Privilege resolution 1(16) directs an officer of a Commonwealth department shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or a minister. You do not want to make any alterations to your submission. Do you wish to make a brief opening statement before we go to questions?

Mr Oxley: I would just like to note for the record that the department's submission to this inquiry addressed issues raised by the original version of the draft bill, which dealt only with the disallowance of bioregional plans. That bill has since been amended to also seek to make the declaration of Commonwealth reserves disallowable.

In our submission we did address the relationship between marine bioregional planning and the process of developing and declaring new Commonwealth marine reserves, and I hope that was helpful to members of the committee. Those relationships are both of a policy and process nature. In particular the alignment of the two processes allows the government to undertake more extensive public consultation on proposed Commonwealth marine reserve networks and to respond to public and stakeholder input before entering into the formal statutory consultation process associated with the proclamation of Commonwealth reserves.

Last week, on 5 May, the Minister for Sustainability, Environment, Water, Population and Communities released for public consultation the first of a series of draft marine bioregional plans and proposed marine reserve networks which are being developed under the marine bioregional planning program and which will be released progressively for public consultation during the course of 2011. The public consultation process for the south west draft plan and proposed marine reserves network will run until 8 August.

There will be a number of activities run during the course of this three-month public consultation period that will give the public good opportunities to engage in the consultation process to understand the government's proposals and to make submissions into the government as part of our public consultation process. It will give us a new and better set of information to inform decisions by government about the adoption of marine bioregional plans and the settling of the government's preferred marine reserve network proposals which will then go into the formal statutory declaration process. It is only after that consideration by government off the back of the 90-day consultation process and the finalisation of a proposal that the statutory process declaring the new marine reserves commences under the EPBC Act. Then we have that 60-day minimum statutory consultation period.

One of the issues which has arisen is a question as to why marine bioregional plans themselves are not legislative instruments. This is an issue which was covered by the department in its submission to the inquiry. If I could draw the committee's attention to the bottom of page three and page four of our submission, the essential point is that when one looks at the provisions of section 176 of the EPBC Act under which bioregional plans are being made, the nature of those plans as described by the act does not meet all of the definitions under the Legislative Instruments Act to be considered a legislative instrument. It does not, for example, have the direct or indirect effect of affecting a privilege or interest and posing an obligation creating a right, or varying or removing an obligation or right. Section 176 simply requires that the minister must have regard to the provisions of a bioregional plan when he is making decisions under the act to which the plan is relevant but, beyond having regard to it, it does not in any way direct or set the nature of the decision the minister must take or the matters that he can take into account in coming to a decision.

I think this was a matter that was unclear back in the mid-2000s as the government of the day was moving to establish the marine bioregional planning process. At that time the government chose to make it very clear in an amendment to the EPBC Act that section 176 was not a legislative instrument and that is why that provision is actually within section 176 now.

CHAIR: This is the Howard government?

Mr Oxley: That is correct.

Senator COLBECK: That is as opposed to the declaration itself.

Mr Oxley: That is correct. The other matter that has arisen of course is the question as to the reasons, historic or otherwise, why the proclamation of Commonwealth reserves is not a disallowable instrument under the Environment Protection and Biodiversity Conservation Act. Despite my best endeavours to trawl over the history, I got as far as finding the second reading speech of 2 October 1974 by the then Minister for Environment and Conservation, Mr Cass. But, alas, the speech did not set out the reasons for that particular provision, so it is unclear to me why the act was constructed in that way at the time. But the point is that from the proclamation of the Australian National Parks and Wildlife Conservation Act in 1972 to the present day the proclamation of Commonwealth reserves under national environmental law has not been subject to disallowance.

The last observation I would make in this regard is that in opposition to that—that is not quite the right word—any proposal to actually revoke the declaration of a Commonwealth reserve is a matter that is subject to disallowance by the parliament. It is section 350 of the EPBC Act which covers revocation and alteration of Commonwealth reserves. In that regard a proclamation that would result in an area of land, sea or seabed ceasing to be included in a Commonwealth reserve before such a proclamation can be made, the minister has to be satisfied that the proclamation if made would be in accordance with a resolution passed by each house of the parliament on a motion. So in the construct of the act when it comes to changing or ceasing to have a Commonwealth reserve, the parliament's intent as represented in the legislation was that both houses of parliament would need to have a say in that, so to speak. That is the end of my opening statement.

Senator COLBECK: So that I understand that final point properly, it would effectively have to be like a piece of legislation and pass both houses, or are you saying that it would effectively go through a similar process to a disallowance in either house?

Mr Oxley: As I read that provision it is essentially saying that if the minister were to bring forward a proposal to revoke the declaration of a Commonwealth reserve, then that revocation would need to be supported by a motion of both houses of parliament.

Senator COLBECK: Okay, so effectively like a piece of legislation?

Mr Oxley: Like a piece of legislation, yes.

Senator BOSWELL: Would this legislation that we are putting up now have to pass both houses of parliament to be effective to allow us to bring a disallowance motion?

Mr Oxley: I am sorry?

Senator BOSWELL: The act before you at the moment would have to be passed by both houses of parliament; is that what you are saying?

Mr Oxley: If there is a proposal to revoke a marine reserve—say if a proposal came forward as a proclamation to revoke one—that would require a motion of support from both houses of parliament under section 150 of the EPBC Act.

Senator SIEWERT: As it currently stands.

Mr Oxley: As it currently stands.

Senator COLBECK: Section 150 or 350?

Mr Oxley: Section 350.

Senator BOSWELL: That is to reverse something?

Mr Oxley: Yes, that is to reverse something.

Senator COLBECK: If for example the current minister wanted to say that we will do away with the south east marine park, it would have to go through—

Senator BOSWELL: Okay.

Senator COLBECK: A motion would have to be passed through both houses.

Senator BOSWELL: All right. I looked very closely in the forward estimates to see what money was available to make the displacement policy work and I could not see anything there. Can you tell was there any money allocated?

CHAIR: That would be a question for Treasury.

Senator BOSWELL: No, Mr Oxley could answer that question because he—

CHAIR: I would have thought it would be either finance or Treasury.

Senator BOSWELL: If you have prepared all these plans for MPAs right around Australia, then you would have allowed for them financially.

Mr Oxley: My general observation would be—and I may have made it at the last estimate’s hearing; I cannot now recall—that there is a general approach to managing budgets that the government would make the substantial provision for a measure in the year in which the resources would need to begin to be spent. When we look at the marine bioregional planning program and where we are with the process of establishing Commonwealth marine reserves, we are going through a process where, for each region, there will be a 90-day public consultation period running over the course of the rest of this calendar year and then we go through subsequent to that a formal statutory consultation process for the declaration of marine reserve networks for each of the regions which itself has a 60-day consultation period. Then some time after that the reserves would be proclaimed. On those sorts of time lines I think we would be well into 2012 before it is likely that we would see a declaration of marine reserves. To the extent that industry structural adjustment will be required then 2012-13 would seem on my reading of things to be the likely time frame at the earliest for a demand for industry structural adjustment arising. Also, given that we are at the very early stages of the marine reserve identification process and public consultation, it is very difficult to know where that process will end and therefore what the implications are for industry and displacement of industry flow-on and socioeconomic effects and the extent to which the government’s fisheries adjustment policy would need to be invoked.

Senator BOSWELL: When will the economic assessment be made in that chronological order that you just announced?

Mr Oxley: Perhaps I can use the south west as a little case study. We have of course in the development of the marine reserve networks had some initial analysis done to understand the broad scale of displacement of commercial activities, or commercial fishing in particular, from the proposed marine reserve networks but we do not have perfect data at our disposal. So the data that we have used for that initial high-level analysis has been Commonwealth fisheries data 2003 to 2008 and state fisheries data 2000 to 2006. In some circumstances it will not adequately reflect changes in the way fisheries are managed.

Senator BOSWELL: Can I just—

Mr Oxley: If you would bear with me I will come very soon to the socioeconomic impact assessment question specifically, but I think the context is going to be helpful. We had already put in place, and we are going to be using the Australian Bureau of Agricultural and Resource Economics and Sciences to do the socioeconomic impact assessment work for the department to put some clear and good estimates around the impacts on the commercial fishing industry and the flow-on effects of that from the proposals for marine reserves. We have had good dialogue and already run a workshop with state fisheries management agencies and the Australian Fisheries Management Authority together with representatives of the commercial fishing industry to get agreement around the datasets that we are using, and the fisheries management agencies have all agreed to provide updated data to make sure that we have the best available information.

Over the course of the three-month public consultation process we will be commencing a socioeconomic impact assessment for the south west region and we will go through the same process for the other regions. That socioeconomic impact assessment will be done in close consultation with commercial fishing industry participants and their representative organisations. In fact those organisations will be facilitating meetings and engagement of ABARES and the department with the commercial fishing industry.

Of course when we get to the end of the public consultation process it is possible that zoning and boundaries within the proposed marine reserve network will change as a result of that process. That would seem a plausible outcome of public consultation. We will then, off the back of any of those changes, need to go through a process of finalising the socioeconomic impact assessment and then that socioeconomic impact assessment will be incorporated into a regulatory impact statement that would support the formal statutory consultation process to declare or proclaim marine reserve proposals.

Senator BOSWELL: Is it the intention to compensate shore-type businesses?

Mr Oxley: You are asking me to anticipate, or forecast, how the government will apply its fisheries adjustment policy in a situation where we do not yet know what the marine reserves network will finally look like, let alone what the flow-on implications for businesses will be.

Senator BOSWELL: Let me ask it another way. Will the socioeconomic assessment be made onshore and not just cover commercial fishing?

Mr Oxley: I understand. Our intention with the socioeconomic impact assessment is that, firstly, its primary focus will be on the commercial fishing industry because it is the sector that is most likely to be directly affected by the creation of marine reserves and the displacement of their activities. As part of the socioeconomic impact assessment process we will be getting good local information on port of landing for catch of fish. We have good

data already from Commonwealth fisheries, but state data is generally poor in terms of the port of landing. What we will be doing early in the socioeconomic impact assessment process and in the public consultation is getting a clear steer from the fishing industry as to those port towns that are particularly at risk of being impacted by the marine reserve proposals and through that process being able to zero in on those towns and then the businesses within those towns where there is potentially a significant impact. In that way, and probably through a series of case studies, in much the same way as it was done by TAFI down in Tasmania for the south east marine reserves process, to highlight specific business impacts, including in the onshore sector.

Senator BOSWELL: Will the adjustment policy be enacted before the closures take place?

Mr Oxley: Again, you are asking me to I guess speculate about the way the government will apply the policy in the future. I think one of the key considerations that we would need to be taking account of if we are displacing commercial fishing out of marine reserves into the broader fishery and that causes an intensification of fishing effort within the areas outside the marine reserves, then we would want to have a clear understanding about the ecological and economic impacts of that. I think that as a matter of principle doing the adjustment as early as you can once you know you are going to have an impact is a good approach to take.

Senator BOSWELL: You did not answer this: who is going to oversee the adjustment policy? What branch of government will do that, or are you going to give it off to some accountancy firm?

Mr Oxley: We are nowhere near the point of making decisions about what part of government would administer a structural adjustment package. This department has experience in administering structural adjustment packages. The Department of Agriculture, Fisheries and Forestry has experience administering structural adjustment packages, as do other parts of government, but we have not yet come to a conclusion about who within government is best placed to administer an adjustment program or indeed whether we might want to contract outside parties to provide that service for the government.

Senator BOSWELL: Is it a Marsden Jacobs report that was made about 12 months ago on adjustment policy which virtually said you do not have to—are you aware of the report?

Mr Oxley: I am not aware of the report you are referring to. I heard you mention it earlier—sorry, one of the previous witnesses mentioned it I think. I am not quite sure as to the document that you are referencing, I am afraid.

Senator COLBECK: Your document was MAXimus; wasn't it?

Mr Oxley: That is correct, yes.

Senator BOSWELL: In essence that document said that you do not really have to make payments; you can if you like but it was not a requirement under the act. Was that the Marsden report?

Mr Oxley: Are you talking about the MAXimus Solutions report—

Senator BOSWELL: Yes.

Mr Oxley: I think you had Professor Bonyhady here this morning who was one of the authors of that report. That was a review of the legal and policy basis for the provision of a displaced activities policy. The essential finding of that report was that in constitutional just terms, compensation terms, that other than native title holders and some mining tenures, the government is not obliged to compensate industries affected by marine reserves. The fact of that position is something that is reflected in the fisheries adjustment policy update released last week by the Minister for Sustainability, Environment, Population and Communities and it was a key statement in the original 2004 policy. Because there is no legal entitlement does not mean that the government does not or will not provide assistance and that has been, I guess, the trend over a long period of time in terms of the provision of structural adjustment assistance recognising that, where there are industry effects as a consequence of a conscious decision of governments to move resources from private benefit to the public good of biodiversity conservation, there is a case for the provision of assistance to help affected businesses adjust to that change in their circumstances.

Senator COLBECK: You indicated that your submission does not consider the amendment to the original bill that was lodged with the committee a couple of weeks ago. Your submission is and was helpful as part of that overall process. I think you made that point at the outset of your statement so I will put that on the record to start with. Have you at this point in time formed a view in relation to the amendment proposed to the legislation?

Mr Oxley: Whether I or the department—

Senator COLBECK: I mean its effect. I am not talking about an opinion. I am talking about its effect.

Mr Oxley: Sure. Its effect, if passed, would be to make the—

Senator COLBECK: Declaration.

Mr Oxley: It would disallow the declaration, so the declaration would not have effect. The Commonwealth reserve or reserves would not be proclaimed. So the amendment achieves the intended purpose, if I understand the intended purpose correctly.

Senator COLBECK: I think that is a fair statement. There was some reference made earlier about fisheries management plans being disallowable. I would just like the secretariat to check on that as an issue for the committee's information, because I have a distinct recollection of being asked to disallow one of those at some point in time in the recent past. I just want to make sure that we are on the right track in respect of that particular piece of evidence.

CHAIR: We will have the secretariat do that.

Senator COLBECK: We had tabled earlier a summary document, I think it is, prepared by the Global Environment Facility which has invested a significant amount of money in promoting environmentally sustainable development over a period of time and talking about lessons learnt and good practices and management of coral reef marine protected areas. Are you aware of that document and has the department had a look at that?

Mr Oxley: No, I am not aware of it. The first I heard of it was when Senator Boswell was quoting from it in the previous body of evidence.

Senator COLBECK: The reason I raise it is that we have all been through a fair bit during this process over a period of time going back through, as Ms Zethoven quite helpfully advised us, a significant period of time but particularly in this current process of the bioregional planning process through the south east initially where we learnt a lot through that process and continue to, I suppose, through this. I just thought it might have been a useful summary of lessons learnt from bioregional planning processes globally, so I just bring it to your attention.

Mr Oxley: We will look out for it with interest.

Senator SIEWERT: You have touched on that issue before in terms of the consultation process. There have been quite a lot of comments made about people not being adequately consulted. How has the process developed since the original process initiative started? There has been some criticism about the south west process. Could you just take us through the consultation again and just be really clear as to what the consultation process has been to date there?

Mr Oxley: The consultation process goes back quite a long way now. At the very outset we released a bioregional profile for each of the regions. In the development of each of those bioregional profiles there was some consultation workshops held really trying to get a good handle on the nature of the Commonwealth marine area and each of those regions to be able to clearly and accurately describe and have agreed what were the key ecological features for the areas to get good information about the social and economic uses of the region. There was some consultation conducted around that.

The next major point of consultation was with the release of the areas for further assessment for each of the regions. Areas for further assessment were large areas which within them contained all of the various ecosystems and other features to deliver a comprehensive, adequate and representative network of marine reserve we would want to see included in that reserve network. But we released large areas because where within those areas we would ultimately recommend to government and government would decide to proceed to public consultation in terms of locating marine reserves that was not so critical. The purpose of releasing those areas for further assessment was to have discussion and consultation with a range of stakeholder interests to try to help us do the fine-scale locating and the drawing of boundaries of marine reserves within those areas for further assessment so as to minimise the social and economic dislocation associated with creating those marine reserves.

For each of the regions there was quite extensive consultation with the various stakeholder groups. The first one released was the south west region. We had really good engagement from the commercial fishing industry, the recreational fishing industry and the NGOs, and they brought their suggestions and views to the table and that helped in the shaping of the final marine reserve network proposals for the south west. Similarly, engagement in the north and north west marine regions, although the engagement was perhaps a little more patchy in the north and north west because we were at an understandably testy period in terms of relations where there was a desire to see the government's displaced activities policy, and some industry participants chose to be less engaged in that consultation process because they had not seen the displaced activities policy.

On the east coast of Australia we ran an extensive period of public consultation. Staff from the department spent a lot of time up and down the east coast of Australia going to fishing co-ops, to ports, meeting with recreational fishing groups, environment NGOs and a whole range of stakeholders. There were in excess of 50

meetings in local areas to get information about how people use the area and what areas were important to them. While the proposals for the east marine region have not yet been released and northern north and north west, I am confident that when they are those people who have been consulted will see that the proposals have taken account of the information that they have provided in that consultation process. We went to the point of providing financial support to some industry organisations to actually help them to gather data. So we provided a grant—not a grant—but support to the Queensland Seafood Industry Association for that purpose and for the New South Wales Professional Fishermen's Association for that purpose. Similarly, in relation to recreational fishing we had a contract with Recfish Australia in which they did quite a comprehensive report for the department last year on the significance of recreational fishing in Commonwealth waters right throughout Australia. That was quite a comprehensive report.

Senator COLBECK: Can we get a copy of that?

Mr Oxley: I believe it is on the Recfish Australia website but I would be more than happy to provide a copy of it to the committee if that would be a useful thing to have.

That is where we have gotten to with the consultation process at this stage. In the south west marine region I think it is reasonably well known now that from a period in early December onwards the minister and the department have spent quite some time talking to a range of different stakeholder interests about the government's emerging thinking as to what a marine reserve network might look like for the south west region. Those conversations were held in confidence and that confidence was maintained so far as I can see because it really was about helping inform government's thinking about what proposals would look like and it was done on a complete without prejudice basis to those people who were providing input into that informal consultation in that no-one has said, 'Well, Joe Fisher said that it would be okay if we put a marine reserve in that area.' It was very much: give us your initial thinking and feeling about it. We are going through a similar process now for the north and north west marine regions and will, later this year, I would expect go through a similar process of informal consultation before we move into this next phase where we are now for the south west, which is a formal public consultation process.

That public consultation process is largely a submissions based process, so we are very keen to receive written submissions from members of the public, industry interests and so on and ideally we would be getting them online but I will of course receive written submissions and submissions by email, and the tools for doing that are available on the department's website.

To support that of course we actually need to be out in the regions talking to people. In the first month of the south west consultation the department will be on the ground in all of the major coastal centres in the south west marine region, so from Geraldton all the way to Kangaroo Island, running a series of open days firstly where we will be in situ in a town hall or the CWA hall, or wherever it might be, for a few hours in an afternoon; I think we are doing from four till 7.30. If anyone wants to learn about what we are trying to do, ask questions, understand marine bioregional planning, the government's marine reserves proposal, they should come along and talk to the department. While there we will be then having a series of meetings with the commercial fishing industry and with recreational fishing interests. We have approached local councils, chambers of commerce and so on to give them the opportunity to talk to the department. That is the first month. We have kept the consultation process quite open and flexible after that because we really do want to be able to respond to public demand about where we might go and spend more time. But I think our focus will logically in the latter part be on areas where there is particularly strong interest.

Senator SIEWERT: One the claims that was made this morning is that people do not understand the rationale for why decisions were made about various zonings and did not see the scientific evidence. Can you tell us what information you have made available publicly? Can you highlight what has been made available publicly and tell us if anything else was made available during those sessions to help people understand the rationale for decision making?

Mr Oxley: This is an issue that has come up a few times and I think perhaps for some of the people who have been engaged in our process we clearly could have been a little bit more proactive in terms of the active provision of information to them. Probably the first observation I would make is that the starting point for this whole process is the bioregional profiles. At the back of the bioregional profiles they are extensively scientifically evidenced and therefore they are a significant repository of information about the science supporting the description and assessment of each of the large regions.

In terms of the process of developing the marine reserve networks for each of the regions, to give the example in the south west region which I think should be up on our website now—I would be very surprised if it were not—is a more detailed technical analysis of the performance of the network proposal for the south west against

the goals and principles for the establishment of the national representative system of marine protected areas in Commonwealth waters. That document itself is extensively referenced and includes tables which have in them the references to the key datasets that the department has used in developing the marine reserve network.

I think we also have on the website a super table that provides again references to all the key datasets that we have used, who owns them, whether or not they are public and where they are publicly available by a web link, the web link is there and where they are publicly available on request it will say: you will need to contact the Fisheries Research and Development Corporation or CSIRO for this information, whoever the data owner is where it is not a publicly accessible database by the click of a button on a web page. I actually think that we have a very good amount of information available publicly about the science underpinning what we do.

Senator SIEWERT: I will turn to issues around risk assessment. I am sure you heard some of the evidence this morning around risk assessment and how it is or is not handled in decision making. Can you just take us through how you handle risk assessment and maybe use the south west as an example?

Mr Oxley: Sure. I was almost going to say something about this subject in my opening statement, so I might just make a couple of high-level observations and then get to the specifics if you like. A number of the submissions and the verbal evidence this morning took the inquiry into questions of policy in addition to the proposed amendments before the Senate. There is a lot of evidence questioning the policy rationale for creating marine reserves to the effect that their existence and zoning should be justified on the basis of demonstrated threats and the capacity of marine protected areas to mitigate those threats. That was the essential argument that was being put forward this morning.

That line of argument misses a key policy foundation of the present reserve network identification process; that is, that what we are seeking to achieve is to develop a national representative system of marine protected areas that includes within it examples of the full range of ecosystems found within Australia's waters. That system is known as it is growing as the National Representative System of Marine Protected Areas and the policy intent to create the NRSMPA was brought to life in 1998 by the Commonwealth, the states and the Northern Territory governments and we have been working to build it ever since.

I mentioned a couple of minutes ago the goals and principles for the establishment of the National Representative System of Marine Protected Areas in Commonwealth waters. Those goals and principles are the Commonwealth interpretation of the national guidelines for building the NRSMPA that were promulgated in 1998, and they exist because the NRSMPA guidelines when they were written really did not provide adequate guidance about how to build a representative reserve system in the Commonwealth marine area; they were quite focused on the inshore waters of the continental shelf. Significant work has been done to give us rules of zoning that actually work for the Commonwealth marine area.

Those goals and principles were first published in the first bioregional profile for the south west marine region in October 2007. The goals and principles make some reference to threats or risks in the sense that the capacity of an MPA to mitigate identified risks to conservation values is a valid consideration when choosing where to locate the representative system. If you have got a choice between an MPA in one location or putting it 40 nautical miles away in another location and in one location you would be able to mitigate a threat as well as getting a representative outcome then, all things being equal, you would put it in the area where you mitigated the threat and represented the bioregion. At its core we are building a representative system which is all about making sure that in perpetuity we have examples functioning effectively of all the different ecosystems that are present in the Commonwealth marine area, and the goals and principles are designed to deliver that. The essential policy rationale is that in doing that as one tool in the overall set of tools for managing man's presence in the marine environment, they can make a significant contribution to supporting the health and resilience of the marine environment.

Risk is something that we consider a little more explicitly in the zoning part of the process. For example, we have done some high-level analysis about the risks that various activities pose in a multiple-use context to the conservation values. That consideration is reflected in the zoning arrangements that are being put forward. But even in the zoning that is proposed for the south west we have a zoning scheme in place that has been significantly influenced by the consideration of socioeconomic impact. So a risk is one consideration; socioeconomic dimension is another consideration.

CHAIR: In the explanatory memorandum by Senator Colbeck he talks about the minister for environment currently having sole power to approve the adoption of bioregional plans. Then it goes on to say that the bill seeks to remove the absolute power of the minister with respect to bioregional plans. The principle behind this was argued as being one of democracy. I am not sure if you can answer this question. You may have to take it on notice but—

Mr Oxley: I may.

CHAIR: how many other ministers have similar what I would describe as absolute power? How many other ministers have got discretion similar to this and, if this is a matter of principle, what would be the implications for other ministerial power in various other acts across the Commonwealth?

Mr Oxley: I think we would firstly need to draw the distinction between the bioregional plan section 176 and the declaration of the marine reserves, because at the time the bill was put forward and the EM was written, I think there was a different understanding of how the marine reserves were being developed as part of the bioregional planning process.

Senator COLBECK: Can I make a point of clarification for you just while we are talking about that—

CHAIR: If you must.

Senator COLBECK: because it is material to what we are talking about. I did mention it earlier in the day and I think, because we are specifically talking about it and it has been mentioned by some other witnesses this afternoon, it is deserving of clarification. In the initial drafting of the bill there were certain instructions given to officials of the Senate to provide a piece of legislation to have an effect which was intended to be around the declaration of the lines on maps, if you want to put it in that term—the declaration of the zones. The terminology that was used and given to the drafters was given in respect of the term ‘bioregional plans’. That is why the process that I have been through in advising the committee and having the information put on the website in relation to the amendment was done in that time and process because it was intended to be directly related to the declaration of the zones.

CHAIR: I am fine on that.

Senator COLBECK: I just wanted to make sure that it was put in context so that people going through the evidence will see—

CHAIR: That is not the issue I am raising—

Senator COLBECK: I think Mr Oxley understands—

CHAIR: Yes, but that is not the issue I am raising. The issue I am raising is a hypothetical. I am not asking you to answer the hypothetical, but what I am saying is if we agreed to recommend this and government adopted it, if this then becomes a matter of principle, as I assume it is being argued, are there implications for other ministers of the Crown?

Mr Oxley: First of all you suggested at the outset that I might want to take on notice the specific question about implications for whether there were other ministers who had similar powers under their legislation. I am really not inclined to take that one. I would suggest that is a matter for research by the committee. It is not within our capability to—

CHAIR: I accept that.

Mr Oxley: do that piece of work. In relation to the—

CHAIR: I just saw the secretary give a big sigh.

Mr Oxley: If I could just make a couple of observations about the disallowance provisions, I think we have already established that the consequence of disallowing the proclamation of a marine reserve is that the proclamation would not take effect so we would not have the reserve. That would be the end of the story and then the government would have to determine whether they wished to pursue a different course, wait six months and have another go or whatever it might be under the parliamentary processes.

As to the implications of disallowing a bioregional plan—it would make it a disallowable non-legislative instrument—there is no immediate effect of such a declaration because really what we are seeking to do through the bioregional plans is to provide information to support better informed and better decision making under the EPBC Act, but the reality is that if a bioregional plan was disallowed the minister would still be, within the bounds of the act itself, well able to take account of the information that is being presented in the bioregional plan so long as doing so is consistent with his obligations under the act.

I guess where it actually does become irrelevant in terms of the flow-on implications is in relation to the matter—I think it was Professor Bonyhady who raised it this morning—that under the construct of the act, section 37A gives the minister the ability to make a declaration that an action that is being taken consistent with the provisions of a bioregional plan does not need to be referred and assessed under the EPBC Act. In the making of a declaration such as that, which would be a disallowable instrument, there is the opportunity to streamline and

make more efficient the operation of the EPBC Act. The disallowance of a bioregional plan would be the loss of an opportunity to make a declaration that improved the overall administration of the act.

CHAIR: I would like you to take this one on notice because we do not have much time. There has been some discussion about our international obligations. I am not sure you have covered in your submission as to whether what effect, if any, these proposed amendments—and I include all of the amendments that Senator Colbeck is proposing—would have on our international obligations under any treaties, acts or whatever?

Mr Oxley: Would you like me to take that on notice?

CHAIR: Yes.

Mr Oxley: Certainly, I am happy to do so,

CHAIR: The other issue that we can deal with now because we have a couple of minutes left is that there is compensation paid to business adversely affected by the creation of a Commonwealth reserve or a Commonwealth marine reserve. What would be the implications for the recipients of the compensation if the proclamation for the Commonwealth reserve or Commonwealth marine reserve were disallowed? Should compensation not be paid until after the disallowance period has expired? Perhaps you could take that on notice.

Mr Oxley: They are good questions and I think I would rather deal with it here and now than take it on notice, if I may?

CHAIR: Yes.

Mr Oxley: I think in the end it is all a matter of timing. The reality is that in a best case scenario industry structural adjustment would be prosecuted and completed as best you could before a declaration actually took effect, so that on the day the marine reserves came into effect everybody was operating according to the new rules. The reality is that we would have to develop interim management arrangements as well to enable a whole range of activities to occur once a declaration has been made.

It would be a very difficult situation indeed if the government had gone ahead and invested significantly in industry structural adjustment and then found itself in a situation where money had been paid on the basis of the declaration of a marine reserve only to have that declaration not take effect. I think the government or the department then would be having some quite serious and hard thinking to do about how we would deal with the circumstances of those individuals. It would be a very messy scenario. I think, though, in terms of the implications and how we would handle that, I might take that element of it on notice, if I may?

CHAIR: I am not asking you how you would handle it. I was simply asking about the implications of it.

Mr Oxley: I think that I have covered the implications reasonably.

CHAIR: This is a similar issue. What about the strict liability offence that is committed after the declaration and then a subsequent disallowance?

Mr Oxley: That really is a legal question which I would have to take on notice.

CHAIR: Could you take on notice any other logistical consequences for industry and other stakeholders from disallowing bioregional plans and proclamations for reserves and marine reserves at a time after the planning reserves have been established?

Mr Oxley: Certainly.

CHAIR: Thank you very much for your assistance. That concludes today's proceedings. I thank all witnesses for their informative presentations. Thanks also to Hansard, broadcasting and the secretariat. The committee has resolved for questions taken on notice to be returned by close of business on Monday, 23 May 2011.

Resolved (on motion by **Senator Colbeck**):

That this committee accepts any documents tabled at today's hearing.

CHAIR: That concludes today's proceedings. I declare the hearing closed.

Committee adjourned at 16:00