

5 September 2008

Senator Anne McEwen  
Chair  
Senate Standing Committee on Environment, Communications and the Arts  
by email to [eca.sen@aph.gov.au](mailto:eca.sen@aph.gov.au)

Dear Senator McEwen,

**SUBMISSION TO**

**The Senate Standing Committee on Environment, Communications & the Arts**

**On**

**THE GREAT BARRIER REEF MARINE PARK & OTHER LEGISLATION AMENDMENT BILL 2008.**

Please accept this submission to the inquiry into the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008, submitted on behalf of the Queensland Seafood Industry Association (QSIA).

The QSIA is the peak body representing the Queensland seafood industry. Our members include professional fishers, seafood processors, marketers and retailers, and other businesses associated with the seafood industry. We provide a leadership role in the sustainable management of our fisheries (including through a number of Environmental Management System (EMS) projects) to ensure future generations have access to the best seafood in the world – Queensland seafood. The Gross Value of Production (GVP) in 2006-07 for Queensland wild caught fisheries exceeded \$200 million. As the retail value represents approximately twice the value of production, our seafood industry contributes almost half a billion dollars annually to the Queensland economy.

QSIA aims to maintain a sustainable fishing industry by:

Ensuring Queensland professional fishermen have secure access to sustainable fisheries resources

- Providing representation and advice to governments and others on seafood industry issues
- Maximising profitability of seafood industry operators
- Actively promoting Queensland seafood to the general public
- Developing cooperative partnerships with research bodies.
- Delivering training and other services for the seafood industry.
- Promoting and advocating for ethical, sustainable, safe and legal fishing practices
- Assisting to develop fisheries management plans strongly supported by all sectors of industry and government.

QSIA is concerned about certain elements contained in the Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 (the Bill) and cannot support the Bill as it currently stands. However, we believe that, with some minor modification, a more balanced and achievable Act can result.

### **Consultation**

First, regardless of the merits or otherwise of the proposed amendments, their development represents another failure to adequately consult professional and recreational fishers on proposed changes to management that potentially will affect these stakeholders' use of the Great Barrier Reef Marine Park. Failure by the Department of the Environment, Water, Heritage & the Arts (DEWHA) to consult fishers on the details of these amendments has allowed a situation to develop where the amendments are now being viewed by fishers "at the last moment" in an environment of suspicion and media controversy.

DEWHA, and possibly the Great Barrier Reef Marine Park Authority (GBRMPA), seem not to understand the high level of residual suspicion of their philosophies, motives and actions in relation to the Marine Park following the 2004 rezoning. Despite formal recommendations that communication with stakeholder groups, particularly fishers, should be improved, this seems not to have occurred. The development and introduction to Parliament of the current proposed amendments highlights this failure to improve communications. The report of the then Australian Government's review of the GBR Marine Park Act, widely seen as a review of the GBR Marine Park Authority, noted: "In meeting the challenge (of managing, and deciding between competing uses of, the Marine Park) ... comprehensive processes for engaging with stakeholders and clearly understood decision making will also be of paramount importance ..." The report also noted: "It appears an effective relationship with recreational and commercial fishing stakeholders is lacking ... The Review Panel is of the view that the processes for engagement with all stakeholders can be improved. The Review Panel has made recommendations with regard to the need for transparent scientific and socio-economic analyses, consultation and measures which will improve the accountability of the Authority."

The QSIA believes there has been insufficient effort on the part of GBRMPA in the way of practical attempts to improve genuine consultation with fishers, develop an "effective relationship" or improve the processes of engagement. The development of the current proposed amendments by DEWHA would seem to have been an opportunity to build a better relationship between GBRMPA / DEWHA and professional / recreational fishers. To have ignored this opportunity leaves the Department and the Authority open -- rightly or wrongly -- to the clichéd and stereotypical characterisation of Canberra-based bureaucracy as arrogant, ivory-towered and remote from stakeholders. Once again, their actions and motives are being questioned in the media and by fishers throughout Queensland.

The QSIA remains open to working with GBRMPA, and, by extension, DEWHA, to try to improve the relationship between the Authority / Department and the seafood industry. Closer consultation with QSIA and, through QSIA, a more open, frank and transparent -- and timely -- presentation of management proposals to the seafood industry would do much to improve relations with fishers and other industry participants. The QSIA believes GBRMPA and DEWHA should take steps to ensure that occurs, regardless of the fate of the current amendment proposals.

The QSIA took an active interest in the above-mentioned review, and, subsequently, QSIA was informed of some of the amendments to the Act that had been proposed.

However, this consultation never involved the level of detail that would have allowed QSIA representatives or others in our industry to be aware of the content of the amendments now causing concern, and addressed in more detail below. Both the seafood industry and recreational fishers are now accustomed to detailed consultation with the Queensland Government on any legislative changes that Government may draft from time to time which may affect our members. It remains a source of disappointment and frustration that the two Commonwealth bodies involved in drafting the proposed amendments affecting our use of the GBR Marine Park have been unwilling or unable to undertake anything approaching a similar level of consultation. This is a situation the QSIA earnestly hopes will change in the immediate future.

Despite the recommendations of the Review Panel, the seafood industry and recreational fishers have discovered the details of the latest amendments “accidentally” at the eleventh hour, when they have attracted media controversy and the amendments have been referred to the Standing Committee with a relatively short period to comment. I note from the Hansard of September 1 that Senator Ursula Stephens from New South Wales believes the amendments have strong support here in Queensland. That is not the case: “...it (the Bill) has strong support from stakeholders, including both commercial and recreational fishing peak bodies ...”. I have had discussions with Sunfish Queensland (the peak recreational fishing representative body in Queensland) and the Recfish Australia (the peak representative body for recreational fishing nationally). Neither of these organisations supports the Bill as it currently stands.

### **Objectives**

Senator Siewert states that the Act is for the purpose of protecting the Great Barrier Reef Marine Park (Monday 1<sup>st</sup> September 2008 – Senate Hansard) “...The changes are to the objects and applications of the act, putting in place a new objects section, with the primary object of the act being the long-term protection of the environment, biodiversity and heritage values of the GBR.” However, the QSIA believes the multiple-use nature of the Marine Park, and in particular the rights of fishers and seafood consumers to access the seafood resources in this very large area, need to be clearly acknowledged. It should be made clear that the very objectives Senator Siewert is talking about do not seek to protect the environment by excluding the users of the environment and only considering their needs as an afterthought.

Proposed Amendments include the following:

#### 2A Objects of this Act

- (1) The main object of this Act is to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.
- (2) The other objects of this Act are to do the following, so far as is consistent with the main object:
  - (a) allow ecologically sustainable use of the Great Barrier Reef Region for purposes including the following:
    - (i) public enjoyment and appreciation;
    - (ii) public education about and understanding of the Region;
    - (iii) recreational, economic and cultural activities;
    - (iv) research in relation to the natural, social, economic and cultural systems and value of the Great Barrier Reef Region;
  - (b) encourage engagement in the protection and management of the Great Barrier Reef Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and industry;

The objectives reflect those of an environmental marine park, not a multi-use marine park. It would be frightening to think legislators now or in the future could come to believe this marine park was established for environmental reasons only and that future decisions could be based solely around environmental concerns. While the objectives do refer to allowing “ecologically sustainable use of the GBR Region for ... recreational, economic and cultural activities”, it should be clearly acknowledged that the Marine Park remains a multiple-use park and that sustainable fishing / seafood production remain valid uses of the park. The objectives must respect the views of a significant proportion of residents in local communities within the marine park catchment who are seafood consumers and/or recreational fishers and the objectives should not ignore the fact that commercial and recreational fishing is of major importance.

### ***Sustainability of Fishing***

As to the sustainability of the fishery in the region, DEWHA has assessed the fishery against the requirements of the *Environmental Protection and Biodiversity Conservation Act 1999* and given it the all clear to continue exporting product. A range of fisheries management measures, combined with the introduction of the Representative Areas Program (RAP) rezoning in 2004, represented a double whammy for fishers in the region, the effects of which are still being felt. One may argue that the measures perhaps went too far. Consider that, except for coral trout, the quota for Red Throat Emperor (the next most significant species) and other reef fish species remain consistently well below the total allowable catch (TAC): 34% used in the 2006-07 fishing year. These are the species available as fresh local fish for Queenslanders and tourists alike and which are now in reduced supply to the marketplace.

At the same time that the RAP came into place, which rezoned significant areas of the Marine Park, the Queensland Government introduced the *Fisheries (Coral Reef Finfish) Management Plan 2003*, which saw the introduction of an Individual Quota system with a Total Allowable Commercial Catch (TACC) and additional regulations for commercial and recreational fishers (limited to 20 fish in their possession in total). Several species, including the Queensland Grouper, Humphead Maori Wrasse, Barramundi Cod and Potato Cod were declared as “no take” species due to their iconic status. These measures effectively capped the total catch of coral reef species and reduced the recreational catch.

### ***Definition of Fishing***

The point of this discussion is that in terms of applying a risk based approach to the perceived threats facing the GBR, fishing does not pose a significant risk. This was confirmed recently by GBRPMA at meetings in Townsville, where different groups, including scientists, stakeholders and Government, were asked to identify the greatest threats to the GBR. Fishing was recognized by all to have minimal current or future impacts on the GBR and ranked well down on the list of possible threats.

It then follows that the definition of “fishing” in terms of this Bill is unnecessarily broad and open to misinterpretation. In fact, neither the Queensland *Fisheries Act 1994* nor the Commonwealth *Fisheries Management Act 1991* contains such detailed definitions of fishing.

9 Subsection 3(1)

***fishing*** means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating of, or taking of, fish;

- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition;
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a launch, vessel or floating craft of any description.

This apparently very broad definition of “fishing” is causing widespread concern amongst professional fishers and other participants in the seafood industry and amongst recreational fishers. One example is the definition: “... Engaging in any ... activities that can reasonably be expected to result in the locating of ... fish.” There is concern about how such broad definitions may be interpreted. There is also the question of how enforcement agencies may in future interpret the necessary transit of (professional and recreational) fishing vessels through green (“no fishing”) zones to reach fishing grounds.

This broad definition of fishing would also apply to certain types of research which could presumably be prohibited under this definition. Many other tourism operations would also fit within this definition. In order to avoid some ambiguity that may arise, a clause could be inserted:

*“except where fishing apparatus are stowed and secured”* or similar words with an additional clause pertaining to activities conducted under permit.

### ***Precautionary Principle***

#### **12 Subsection 3(1)**

***precautionary principle*** means the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

We are concerned that the use of the precautionary principle should not become an excuse for the lack of dedicated and directed peer-reviewed research to examine the effects of fishing. Appropriate measures should be taken to quantify patterns and trends in commercial and recreational catch statistics and any management decisions regarding fishing in the marine park need to be scientifically based and give due regard to social and economic impacts. Interestingly enough, the definition of environmentally sustainable use as defined in the EPBC Act 1999 by definition takes into regard use of natural resources and the principles of ecologically sustainable use clearly identify consideration of social and economic impacts.

### **3AA Ecologically sustainable use**

For the purposes of this Act, ***ecologically sustainable use*** of the Great Barrier Reef Region or its natural resources is use of the Region or resources:

(a) that is consistent with:

(i) protecting and conserving the environment, biodiversity and heritage values of the Great Barrier Reef Region;

and

(ii) ecosystem-based management; and

(b) that is within the capacity of the Region and its natural resources to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.

### **3AB Principles of ecologically sustainable use**

For the purposes of this Act, the following principles are *principles of ecologically sustainable use*:

- (a) decision-making processes should effectively integrate both long-term and short-term environmental, economic, social and equitable considerations;
- (b) the precautionary principle;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

Our interpretation of these principles is that environmental, social and economic impacts of activities within the Marine Park have equal consideration. This extends to any decisions relating to management of the Marine Park that will impact on commercial and recreational fishers. We expect that appropriate studies will be commissioned to identify the impact of management decisions on coastal communities and that consultation with these communities will be timely and thorough and decisions reached will have strong community involvement and support. To date, the track record of the Australian and State Governments in achieving this balance has not been good and there will need to be considerable effort on the part of Government to undo the high levels of mistrust and lack of faith that exists to win back the hearts of coastal communities.

The Review Panel stated in its report that: “The 2003 Zoning Plan implemented the Representative Areas Programme and, in conjunction with associated State processes, has put in place a level of protection that will place the ecosystem in a strong position to maintain its resilience over the longer term.” The Review Panel pointed out that: “The 2003 Zoning Plan has resulted in short-term adjustment pressures that have been locally quite intense, particularly as its introduction came at a time when businesses were also being impacted by a number of State fisheries management changes, State coastal marine park zoning changes and external market factors,” The Review Panel then went on to make recommendations about the need for “transparent scientific and socio-economic analyses, consultation and measures which will improve the accountability of the Authority”. The Panel also talked about the need to improve the coordination of management activities impacting fishing. The Review Panel also discussed the concerns of stakeholders arising from “disagreement with the scientific underpinning, and perceptions of a lack of transparency, accountability and due process”, and goes on to say that “While not sharing all these concerns, the Review Panel proposes that any future zoning arrangements ... allow for extended public consultation and that they be based on substantive socio-economic and biophysical information”.

The QSIA believes that, in the spirit of those recommendations and the widespread public concern behind them, the current amendments likewise should have been the subject of extended public consultation, with clear consideration of any possible socio-economic impacts. This does appear to have occurred. Such public consultation could have allowed development of amendments acceptable to all stakeholders, without creating an atmosphere of controversy and suspicion. .

## ***Criminal Convictions***

The recording of criminal convictions for minor fishery offences is a complete overkill. Many commercial and recreational fishers to date have now recorded criminal convictions based on minor fishery offences some of which were by pure accident. A criminal record limits job prospects, visas for overseas travel and insurance, and has very serious consequences far beyond what should reasonably imposed for a fisheries offence, especially where many such offences were unintentional..

I am aware that, in many cases, criminal convictions are not even recorded for offences such as assault or theft. However, if you are mistakenly inside an imaginary line (Green Zone) and happen to be fishing or suspected of fishing, you can receive a mandatory criminal conviction and hence be tarnished with a criminal record. I bring your attention to a case two years ago, whereby a commercial fisher of 35 years was convicted of fishing in a Green Zone with his trawler. The circumstances were that he was fishing outside the zone, when his gear became tangled and he was unable to retrieve it. Whilst trying to retrieve the gear the boat had to stop moving and slowly drifted into the Green Zone, where he was apprehended. Although he was clearly not fishing, and this was well understood by GBRPMA Officers, he was still sentenced, fined and ended up with a criminal record. Whether the legislation was intended to be that tough, I do not know. The fact is he received an extremely harsh sentence for something beyond his control.

***I urge you to remove this section from the Bill.***

## ***Legal Defence***

As Senator Stephens points out, this act try to take away basic legal rights of defence. It says if you are in green zone you know the boundaries. This Bill takes away basic legal rights and is not fair or right. I ask you to strike out the clauses.

A representative of the QSIA would welcome the opportunity to speak further to industry's concerns with these amendments. However, in closing, let me reiterate that detailed discussion of these amendments with the seafood industry should not have been initiated by members of your Senate Standing Committee, but rather by the officers responsible for oversight of the drafting of the amendments, and they should have occurred during the development phase, not after their introduction to the Australian Parliament. The QSIA is left to ponder whether DEWHA and GBRMPA have taken on board any of the lessons of the RAP rezoning, in particular the specific recommendations of the Review Panel regarding socio-economic impacts and consultation. On behalf of the Queensland seafood industry, I would urge you to recommend redrafting of the current amendments to reflect industry's concerns, and to note that DEWHA and GBRMPA should initiate positive steps to genuinely and meaningfully engage with industry in the development phase of any future legislative or other management changes that will impact on the seafood industry and recreational fishers.

Yours sincerely  
Martin Hicks  
QSIA CEO