



Monday 8th September 2008

Senator Anne McEwen
Chair
Senate Standing Committee on Environment, Communications and the Arts
by email to 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 annexure to the original 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).

This advice is supplemental to the original document and is in the form of comments from legal representatives acting for the Queensland Seafood Industry Association.

Yours sincerely

Robin Hansen
Acting President

Creation of new offences under the EPBC Act –

S24B EPBC Act - A person must not take in the GBRMP an action that has, will have or is likely to have, a significant impact on the environment.

5,000 penalty units, 50,000 penalty units for a body corporate.

S24C EPBC Act – A person commits an offence if:

- o The person takes an action; and
- o The action is taken in the GBRMP; and
- o The action results or will result in significant impact on the environment.

Strict Liability applies to these offences.

Comment: Far too vague and really needs examples added.

GBRMP ACT

S61AAA - Vessel Monitoring Directions

165. Item 125 establishes a Subdivision empowering the Authority to issue a “vessel monitoring direction” **requiring a person to provide, or cause to be provided (e.g. via**

another government agency), Vessel Monitoring System (VMS) data in relation to a

vessel while it is within the Marine Park. Such a direction may only be made in relation

to vessels that are required, under a Commonwealth or State law, to be equipped with a

VMS. The provision does not empower the Authority to direct a person to install and use a VMS system. **Directions may be issued in relation to an individual vessel (an**

“individual vessel monitoring direction”) or in relation to a class of vessels (a “class

vessel monitoring direction”), for example, all vessels licensed to operate within a particular fishery.

Comment: note the parts in bold and particularly the all inclusive direction as underlined.

Offences created for the failure to disclose the VMS data.

Comment: can you have a reasonable excuse?

S61AEA - 3 strikes – potential ban from operating in GBRMP

188. Item 125 establishes provisions empowering the Minister to issue a person who has, at

least three times in a ten year period, committed an offence against or contravened a

civil penalty provision of the GBRMP Act, with a direction prohibiting access to the

Marine Park or placing restrictions on that person’s entry and use of the Park.

Such

directions can have effect for a maximum period of ten years from the date of the most recent offence/contravention. Item 140 provides for internal reconsideration and AAT review of a decision to make or vary a direction limiting access to the Marine Park. This provision is designed to enhance deterrence. The Great Barrier Reef is an area of significant environmental, economic and social value. The GBRMP Act is designed to protect those values. Persons who repeatedly breach the Act jeopardise the protection and ecologically sustainable management of the Great Barrier Reef. The capacity to exclude from or place conditions on use of the Marine Park by repeat offenders is therefore considered appropriate. The requirement for the three "strikes" to be in a ten year period, and the maximum duration of a direction of ten years, is designed to reflect a similar policy to that of the spent convictions scheme established by the *Crimes Act 1914*.

Comment:- this is far more harsh than the Transport Operations Road Use Management Act for serial road pests.

S61 AMD - "All Fish" presumed to have been taken in contravention of the Act

The subdivision includes a further provision relating to commercial fishing offences. It establishes a presumption that all fish found in the possession of a person at the time they are apprehended are deemed to have been taken in contravention of the Act.

The provision is necessary as it is highly difficult, if not impossible, to establish which fish on board a vessel at the time it is found fishing in an area where fishing is not permitted

have been taken illegally. Some or all fish could have, for example, been taken outside

of the area in question. Knowledge of where fish have been taken from will generally be entirely within the knowledge of the defendant. It is difficult, if not impossible, to prove that particular fish have been taken from an area where fishing is prohibited. It may be the case that some fish have been taken legally and others illegally. This creates

two problems:

□ *Liability for unlawful seizure* - seizure provisions only allow for the seizure of items involved in the commission of an offence/contravention of a civil penalty provision.

As it is near impossible to prove that particular fish have been taken illegally, it is difficult to confidently seize fish, given potential liability if fish are seized without sufficient power. Seizure of fish for evidentiary purposes aids in prosecuting offences and securing appropriate penalties.

□ *Inadequate deterrence* - illegal fishing is a significant pressure on the Great Barrier Reef. There are strong incentives to illegally fish given generally higher catch rates in areas closed to fishing. To date, maximum fines ordered for fishing contrary to the GBRMP Act are approximately \$40,000 for trawling and approximately \$35,000 for line fishing. Commercial fishing boats, on a single trip, can and generally do catch product in excess of these amounts, and boats operating illegally

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are likely to catch more fish in a shorter space of time than those operating legally.

An effective capacity to seek forfeiture of fish (or application of the *Proceeds of Crime Act 2004*) is therefore necessary to ensure appropriate deterrence is provided.

Includes a dory – all fish on dory and all fish on primary vessel taken to have been taken illegally.

Comment:- appears too broad and harsh. What if proven they were only in closed area for 5 minutes, yet had 2 weeks catch on board?

S61ANA – Conduct of directors, employees and agents

Any act by a director of a company is taken to be done on behalf of the body corporate, and subject to the higher penalties. Extends to employees or agents of the body corporate, within the scope of his or her actual or apparent authority.

Comment:- This day and age with companies etc, this section is unfair. What if a humble skipper is the director of his own company on accountant's advice? He is hardly the big corporation rorting the system.

S61AOA - Criminal liability of company officers.

As above.

38BD – Operation of a fishing vessel in zone: offence

New offence of a primary commercial fishing vessel in a zone where fishing is not permitted. Entry is only permitted for transiting, anchoring, in an emergency or as a result of an unavoidable accident. 500 Penalty Units.

38FA – Collective and vicarious liability – persons responsible for vessels used in committing offences.

Comment:- A 'responsible person' can be fined for 'failing to take all reasonable steps and to exercise due diligence to prevent the vessel, aircraft or platform being used in committing an offence.

For instance, the master of the primary vessel could be fined for a dory fishing in a green zone, as could the licence owner and possibly the vessel owner.

Too harsh and should be more akin to the State Legislation.

38GA – Aggravated offences –

1(a) – an aggravated offence against a provision in this part if the conduct the person engaged in that constituted the offence was fishing that involved a primary commercial fishing vessel or a dory.

Comment:- again, no examples/detail too broad.