

The Recreational Fishing Alliance of NSW

“Promoting Sustainable Fishing”

PO Box 328 Matraville, NSW 2036
Email: secretary@rfansw.com.au
Website: www.rfansw.com.au



Senator McEwen, Chair
Senate Standing Committee on Environment, Communications and the Arts
E-mailed to: eca.sen@aph.gov.au

8th September 2008

To Senator McEwen

SUBMISSION TO The Senate Standing Committee on Environment, Communications & the Arts On

Re – The Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008

The Recreational Fishing Alliance of NSW represents the Recreational Fishers of NSW on many issues that do, or may have an impact on Recreational Fishing or Fishers in NSW, now or in the future. Consisting of representatives from many fishing major fishing organisations in NSW which constitute approx 16,500 members.

RFANSW Was formed in 2001 generally to look at how best to manage the issues surrounding the introduction of the new General ‘All Waters’ Fishing Fee, from there the RFA now plays an important role in many issues and the ongoing management of recreational fishing in NSW.

The Alliance has a number of issues and serious concerns about the provisions indicated in the current bill and does not support its passage any further in its current form.

Recreational fishers all around Australia continue to be at the forefront of change, investing in the future of fishing and its management whilst looking to improve fish handling and released fish survival outcomes for various species, breeding and wild fishery stocking strategies etc. Alone in NSW the Licence Trust spend in excess of \$4m annually in the areas of research, environment and fish habit, education and fishing awareness.

This Bill essentially challenges the fundamental principles behind the Precautionary Principle (managing the environment and marine resource) and Marine Parks being multi-use parks, a place of enjoyment that ALL Australians maybe able to physical interact with, see and enjoy it beauty now and into the future, rather than observed from afar.

Whilst some fishing organisations have been alerted to this amendment bill many have not. It has posed the problem that many local fishers who will be directly impacted will not have had or been able to provide comment in the available timeframe of 7 short days. Just as the Alliance has had difficulty in consulting with its member bodies and fishers that have, or regularly visit the area.

Whilst Captain Cook did place it on a map in the 18th century, Queensland’s north would not have developed greatly if it was not for the international recreational fishing opportunities it possessed in the early 60’s & 70’s.

This backs the governments and departments position in such debates and any significant changes to legislation. Recreational fishing apathy follows the principle that the few unpaid volunteers will do the hard yards to represent the many, generally a loose situation results, but there is always hope that the democratic right will be upheld one day. Currently Australia has approx 3.5 million fishers with NSW approx 1/3rd which is growing annually.

Our concerns with the Bill fall into the following areas;

Who of the stakeholders have been consulted during the drafting of the proposed Bill?

Senator Siewert indicates that the Act is for the purpose of protecting the Great Barrier Reef Marine Park.

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;

This was quoted by him on Monday 1st 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 very objectives that the senator is talking about seeks to protect the environment by excluding the users of the environment and only considering their needs as an after thought or to use the words of the Bill “...*so far as is consistent with the main object...*”.

The way the Bill attempts to define fishing:

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.

RFA believes these definitions are broad and appear to be very draconian, in the drafting implementation of regulations the intent and interpretation of many innocent activities will be lost and may lead to unreasonable prosecutions.

It is suggested that inserting a phrase similar to these words “**except where fishing apparatus are stowed and secured**”, in an additional clause in **9 Subsection 3(1)** pertaining to activities conducted under permit.

It also appears that the burden of proof has been removed or shifted from those that enforce the final laws to those that are being prosecuted i.e. ‘guilty, until one is proven innocent’ which is against all our national principles. This also changes the financial responsibility greatly for those that are being prosecuted in relation to proving one’s innocence if they choose to object to a decision.

The Alliance has some understanding from the reading the pages of notes as to why this may have come about and relates to larger commercial type operations, however the impact if applied inappropriately to the Recreational Charter and smaller Commercial Operators could be devastating.

In **12 Subsection 3(1)** the Alliance suggests inserting,

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.

13 Subsection 3(1)

Insert:

principles of ecologically sustainable use has the meaning given by section 3AB.

18 After section 3

Insert:

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.

The 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 – cont'.

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.

It is noted in a recent report it identifies the challenges, priorities and framework for the future, in particular stakeholder views and future considerations must be sought.

In terms of Schedule 2 – Matters relating to the Great Barrier Reef Marine Park Authority, the Alliance supports the inclusion of an Indigenous person on the board:

1 After subsection 10(6)

Insert:

(6A) At least one member must be an Indigenous person with knowledge of, or experience concerning, indigenous issues relating to the Marine Park.

Further RFA would like to see the inclusion of a respected member of a local community with knowledge of, or experience concerning, regional heritage issues relating to the Marine Park. This person would need to demonstrate a sound knowledge of the north Queensland lifestyle and the role played by commercial and recreational fishing and other tourist activities in the Region. This would go some way to regaining public support for the Marine Park Authority.

With regards to Schedule 6 – Offences and civil penalties,

Item 24 – Offence and civil penalty provisions, in particular too;

Strict liability – Deemed awareness of the Marine Park, its zones and the restrictions on use that apply;

We have been unable to entirely grasp the issues in this area however we concerned about the interpretation of strict liability as it applies to knowledge of the boundaries of zones where fishing is prohibited. We acknowledge that maps are available and clear descriptions of the boundaries of zones have been published, but average recreational angler will find it difficult to determine their exact position in relation to a zone.

Despite the fact many fishers who access the Marine Park have access to a some form of technology such as GPS's and electronic mapping systems, most are of low value and only rudimentary units that do not contain information about the boundaries of different zones nor do they show with pin point accuracy exactly your position nor do they sound an alarm if you do cross over a boundary. More sophisticated and expensive units do have detailed maps loaded but there is coast involved which does not help fishers who choose not to embraced new technology or do they rely on paper based mapping knowledge or skill.

Boundaries for various zoned areas are based on computer models, they allow for curves or angles and are not always true north-south or east-west blocks, following straight lines or align with prominent coastal landmarks. We feel therefore, that it is unfair to expect fishers to know precisely their location at all times. We trust that discretion will be used and each case be treated fairly and with due consideration as to the defence of the accused. We draw particular attention to the part in **section 247** and trust that honest and reasonable mistakes will not be punished.

The Alliance does not support the imposing of criminal convictions for all fisheries offences. We do acknowledge that the impacts of illegal fishing can be serious, we note that on the GBRMPA website no mention is made of illegal fishing as a serious threat to the health of the reef. We do commend the introduction of civil penalties and infringement notices but feel that the recording of convictions is excessive and carries additional burdens if applied in other areas. There must be a provision for first time offenders to not have a conviction recorded.

On the subject of convictions, RFA is concerned about criminal convictions recorded against approximately 100 fishers between 1 July 2004 and 14 December 2006 after which time, the recording of mandatory convictions was removed from the Act. We believe that these convictions were unfair in most cases and ask that the cases be reconsidered and the convictions be removed. We believe that the Rudd Government made an election promise to have these convictions struck from these people's records and the Alliance suggests that the committee should do all in its power to have these convictions removed.

In closing, while the Amendment Bill appears to modernize and streamline legislation, it does not go far enough to address the recommendations of the 2006 Review Panel Report¹ which calls for the continued operation of the Marine Park as a multiple use park. The Review Panel noted *"...it appears that an effective relationship with recreational and commercial fishing stakeholders is lacking. To an extent, such tensions between the Authority and affected stakeholders were inevitable in view of the substantial change to zoning arrangements proposed. Nevertheless, 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 amendment to the Act provides the perfect opportunity to enshrine in law, the nature of this multiple use park where both people and the environment matter and with slight adjustment to the Objectives of the Act, this would be possible. As it stands, the sentiment of current users and those that may have a chance to use it in the future, the government wish to 'lock the park up and throw away the key now'. Should this form a management persist then it will not belong before an upwelling of real fisher sentiment is felt from local communities and those that come from afar to enjoy this world class fishing experience

RFA would also like to suggest, as all Australian fishers were not able to participate in this debate, then they must be able to comment, or be involved during the drafting of regulation and before it is made final law. This maybe achieved by using several local stakeholders during the drafting process as not all rules or local knowledge for the entire park be contained by a single person.

The Alliance does support Marine Parks that enlist and retain a multiple use facet, should research show and prove beyond any reasonable doubt that such type of usage, be it aquatic or terrestrial be detrimental to the environment of a Marine Park then that type of usage should be examined and those involved should consulted an allowed to apply suitable changes before being further restricted or totally removal of their access.

Kind regards
Malcolm Poole
Chairman
Recreational Fishing Alliance of NSW
8th September 2008

¹ Review of the *Great Barrier Reef Marine Park Act 1975* Review Panel Report, 2006