

NATIONAL SEAFOOD INDUSTRY ALLIANCE

NSIA Submission to the Environment and Communications Legislation Committee: Inquiry into Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011

The National Seafood Industry Alliance (NSIA) was convened in 2009 to provide representation of our industries at the Federal level. NSIA focuses on areas of national policy that impact the fishing industry. One of these areas is 'sustainability and resource access' which includes the Commonwealth's marine bioregional and reserve planning processes.

The NSIA welcomes the opportunity to assist the Committee in their deliberations on the *Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011*.

NSIA position re the Bill

NSIA provides in-principle support for the current Bill, at this point in time, given that there is currently no publicly available information regarding a time-frame for the introduction of legislative amendments to implement the Hawke review recommendations.

NSIA considers that appropriate transparency and scrutiny of processes by the Australian community should be clearly articulated in the regulatory framework. This is important given the issues raised in the Hawke review (see below) and the very significant impact that the bioregional planning process can potentially have on current and future marine industries, including fisheries, as well as local and regional communities.

In addition, NSIA notes that if the proposed Bill is enacted then both stages will be subject to parliamentary oversight i.e. 1. declaration of the bioregional plan itself, and 2. approval of the Commonwealth reserve management plan.

Current Legislative Provisions

We note that the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) currently states that a bioregional plan is not a legislative instrument (176(4A)) and that approved Commonwealth reserve network management plans in relation to bioregional plans are disallowable instruments (371).

We also note that the matter of ministerial discretion was raised and considered by the (then) Senate Environment, Communications, Information Technology and the Arts Committee's review of the *Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform (Consequential Provisions) Bill 1998* (April 1999). The Committee noted the number of submissions that criticised that Bill for having unfettered Ministerial discretion. However, at that time the Committee disagreed with that contention as they considered that the bill contained a range of checks and balances, including public consultation, to ensure that all relevant factors would be taken into account in decision-making.

The 2009 *Report of the Independent Review of the ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999* (Hawke review) covering the first 10 years operation of the Act is noted. The government is yet to respond to the report. This review did not raise the issue of ministerial decision making in relation to the declaration of bioregional plans per se. The report does, however, acknowledge the public criticisms relating to the extent of the Ministerial discretion and transparency of the decision-making process and calls to narrow that discretion. The report recommends that the Minister should remain the primary decision-maker (13.9), however, the process through which the Minister makes decisions should be improved and made more transparent, including through decision-making criteria, and accountable (13.10). Recommendations are specifically made on the consideration of Ecologically Sustainable Development (ESD) principles during decision-making (13.12-13.30), particularly the current emphasis on only one of these - the precautionary principle, as well as information required to underpin decision making.

The Hawke review also discusses the current relationship between fisheries management legislation and the EPBC Act and marine protected areas. Of particular note is the recognition that:

11.89 The protected area provisions of the Act have a terrestrial focus that does not always meet the needs of the marine environment. A review of the current provisions or the development of specific marine protected areas provisions in the Act could provide greater clarity and more effective protection of the marine environment.

Noting the issues raised in the Hawke review (above) NSIA considers that, in-principle, appropriate amendments to the current EPBC Act could go a long way to enhancing scrutiny and safeguards and, of particular interest to the fishing industry, ensuring that any marine bioregional plans declared by the Minister transparently consider and address the range of issues that directly affect stakeholders and the Australian community.

Yours sincerely

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MEMBERS OF NATIONAL SEAFOOD ALLIANCE

