

# **Coalition Senators' Dissenting Report**

The Coalition supports a balanced approach to marine conservation.

Marine Protected Areas are intended to protect and maintain biologically and culturally significant marine areas. The previous Coalition Government commenced the process of establishing comprehensive Marine Bioregional Plans, which include determination of Marine Protected Areas around Australia's coastline.

In 2006, the former Coalition Government announced the establishment of eleven Marine Protected Areas, as part of development of the South-East zone, first Commonwealth Bioregional Plan. These eleven Marine Protected Areas were only created after careful consideration and consultation with the recreational and commercial fishing sectors, environmental non-government organisations (ENGOS) and other stakeholders.

The former Coalition Government engaged in an extensive and cooperative consultation process before any Marine Protected Areas were declared. This consultation ensured an appropriate balance was struck between protecting marine biodiversity and minimising social and economic impact on fishers, businesses and coastal communities, and better outcomes. The final result was a greater area protected with less impact on industry.

The Rudd and Gillard Labor Government has continued the Coalition's program, but have failed to continue with appropriate consultation with the fishing industry and the wider community. The successive Labor Governments are not adopting a balanced approach and instead appear to preference the views and desires of ENGOS at the expense of the fishing sectors.

Many communities that rely on fishing are directly threatened by the Government's inability to adequately consult on whether a region should be declared a Marine Protected Area.

Unsurprisingly, recreational and commercial fishers, as well as the many related businesses and communities that rely on fishing, have raised substantial concerns about the Government's handling of Marine Protected Areas.

Appropriate and effective consultation is needed if Marine Protected Areas are to balance environmental concerns with the need to support industries, protect jobs and sustain the communities that rely on commercial and recreational fishing.

Many communities will face enormous economic and social losses unless there is proper and effective consultation on potential Marine Protected Areas. Only proper

and effective consultation will ensure future Marine Protected Areas balance preservation of the environment with economic growth and strong coastal communities.

The Coalition is committed to returning balance and fairness to marine conservation.

It is with this in mind that the Coalition proposed the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011.

The original Bill sought to make bioregional plans disallowable instruments, under the provisions in the *Acts Interpretation Act 1901* and the *Legislative Instruments Act 2003*. A subsequent amendment to be moved by Senator Colbeck and provided to the Committee prior to the Senate hearings so that it could be fully considered as a part of the inquiry process clarified the intention to make Marine Protected Zones disallowable instruments. The purpose of this amendment was not to change the intent of the legislation but to ensure that it met the objectives as set out in the Second Reading Speech and the Explanatory Memorandum.

Under the current provisions for bioregional plans with the Environment Protection and Biodiversity Conservation Act, a bioregional plan as prepared under subsection 176(1) or (2) is not a legislative instrument.

As such, the Environment Minister currently has sole power to approve the adoption of bioregional plans. The Coalition believes this amendment should be made to provide far greater parliamentary sovereignty and allow both houses the right to debate the merits of any new Marine Protected Areas.

The risks associated with this principle of unlimited power were clearly articulated by Harry Evans, former Clerk of the Senate in his paper *Constitutionalism, Bicameralism and the Control of Power*, (2008).

The real realists, however, are those who know that their pockets will not remain unpicked and their rights untrampled if their chosen representatives are given a free rein between elections indefinitely. Such people are properly sceptical of the claim that “strong government” equals economic growth. They will appreciate the difficulty of judging a government if it controls the information they receive. They will therefore welcome the timely installation of safeguards to curb malfeasance at an early stage. Australia is now undersupplied with safeguards, and oversupplied with public scandals, not counting the misdeeds we do not get to hear about. We should preserve the safeguards that exist and think very carefully about new ones.

The current lack of review available to the final declaration of Bioregional Plans is a clear example of the vesting of power within narrow confines, resting solely with the

Minister and therefore provides the opportunity for abuse of power. Declarations of Bioregional Plans and Marine Protected Areas have significant environmental and socio-economic consequences. It is therefore inappropriate for these declarations to be made without the opportunity for parliamentary review, a further “safeguard” is required. By making the declaration of Bioregional Plans and Marine Protected Areas disallowable instruments, these significant decisions will be subject to that scrutiny and a further safeguard established.

Further, Dr Coghill, appearing in a private capacity, supported the Bill. Reflecting on his seventeen years in the Victorian parliament, including four years as speaker, Dr Coghill stated:

**Inquiry Hansard, Friday, 13 May 2011, p 1**

**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.

Overwhelming support for parliamentary review of the marine bioregional planning process was evident in submissions to the Committee, such as the following from the Abalone Industry Association of South Australia:

**Inquiry submission number 14**

It is a real slap in the face to the good work done by our Government Fisheries Managers and Industry. We are very uncomfortable with the fact that the final decision of adopting the bioregional plans rests with the Minister for Environment only. We would prefer to have a far more rigorous and robust process through the parliament that doesn't have the potential to be clouded by extreme green views.

And from Queensland Seafood Industry Association:

**Inquiry submission number 18**

Without this amendment the department and the Minister have unfettered power without recourse.

QSIA would also argue the proposed amendment bill allows for a further level of protection by the Parliament that ensures single issue interest groups are unable to remove the rights of others without due process.

### **Ineffective consultation**

The Government argues that sufficient stakeholder consultation has been undertaken with regard to the bioregional planning. However, submissions made to this Inquiry are testament to the high dissatisfaction amongst sectors of the industry. While the proposed Bill, and this Inquiry, deal with a technical legislative aspect of the Environment Protection and Biodiversity Conservation (EPBC) Act, the majority of submissions to this Inquiry highlighted flaws with the Government's progressing the Bioregional Plans network and Marine Protected Areas within the Bioregional Plans.

The importance of effective consultation cannot be overstated. Ultimately the success of initiatives relies heavily on their acceptance by key stakeholders.

### **Inquiry Hansard, Friday, 13 May 2011, p 3**

**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 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 Ostrim in her work which has led to her Nobel Prize.

There are many voices in the discussion and debate related to the establishment of Bioregional Plans and Marine Protected Areas. The Government should be concerned that a significant number of these stakeholders do not feel their concerns have been heard or considered. The ability to further review the declaration of Bioregional Plans, and Marine Protected Areas, by making them disallowable instruments would provide opportunity for the Australian Parliament to consider the concerns of their constituents, and to take action when required.

The following witnesses and submission extracts validate the Coalition's concerns in this area:

Mrs Judy Lynne, Executive Officer, SunFish Queensland agreed with Senator Colbeck's summation of her concerns as being

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**Inquiry Hansard, Friday, 13 May 2011, pp 24-25**

**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 there is an opportunity for your voice to be heard as part of that process.

**Mrs Lynne** – Yes

Mr Conway, Chair of RecFish Australia, stated:

**Inquiry Hansard, Friday, 13 May 2011, pp 22-23**

**Mr Conway** – ...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 transparency of the process in the past has been less than what was possible expected by the stakeholder groups. We also understand that the same stakeholders have initiated that the precautionary principle may have been applied inefficiently. (The underlying assumption from recreational fishers is that decisions should be based on sustainable, well managed conservation actions with input from all stakeholders, rather than the lock-out mentality of some groups.)... 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...the Hawke review suggested that there was a need to improve transparency in decision making...

Submission 2 from Kathryn Williams, identifying herself as “an irate Australian Citizen”:

“The Government seems to rush into these types of proposals and not take into account what the layman says. You say you listen to us at these Marine Park meetings but I think you are only there to show your presence and that you have already made the decision to go ahead.”

Submission 3 from Greg Haines, Managing Director, The Haines Group:

“The apparent political power of these minority groups, combined the perceived shallow public consultation conducted on Marine Parks zoning has left an indelible impression in the minds of many that Democracy is dead. At least in the matter of Marine Zoning. If this all sounds far-fetched you need look no further than the submissions to the 2005 Review of the Great Barrier Reef Marine Park Act.”

Submission 8 from Mr Cameron Talbot:

“I’m concerned that \ lobby groups like PEW WWF and AMCS seem to get access to Ministers and control of what happens. The Department does not consult us or simply ignores what we have to say. I feel that democracy has been lost and further more my faith in the Labour party has gone with it. I along with all labour supporters that I know who also fish, are so disenfranchised with this government that at the next election we will do what I never thought we would and vote LNP. This is the last chance I will give labour, if this falls thru so does my vote- for good. Fishermen (and there are a lot of us) will not forget this if it is swept under the carpet.”

Submission 7 from Mr Scott Thompson, Recreational Fisherman:

“Also of note is the Government’s lack of public consultation in regards to Marine Parks. The relevant information is often skewed towards a biased opinion and any scientific studies, data and evidence are either non-existent or hidden from public viewing until the Minister has given their approval of the plan. Consultation is often held and the public is given a chance to speak, however, never, not once has anything the public majority been given any consideration in regards to Marine Parks. I urge this Senate Committee to form an investigation and review into the current consultation practices of the Government and to oversee new, fairer consultation processes whereby the public are given adequate notice and information, this would include making any and all relevant scientific studies public and available for viewing and evaluation.”

Submission 3 from Superyacht Australia:

“Biodiversity conservation, in the context of ecologically sustainable development, is the central objective of the EPBC Act and this approach underlined the Government’s strong commitment to ensuring the long-term sustainability of the Australian marine environment, as envisaged in Australia’s Oceans Policy (1998).

The Government at the time clearly stated that the approach would give marine industries clearer guidance, and help to streamline the operation of approval processes under the EPBC Act, improving the information available to Government on which to base its decisions.

While there were substantial achievements through regional marine planning with the release of the world's first regional marine plan in the South-east Marine Region, the Rudd Government decided that a deviation away from that process with a much increased emphasis on marine conservation. This change in emphasis also resulted in a different approach to industry engagement which has resulted in a significant loss in confidence by industry to the process and its commitment to the outcomes of the current process."

People do not feel their concerns have been heard, they feel isolated and ignored, clear hall marks of ineffective consultation.

Perhaps even more concerning are the issues raised by the Australian Fishing Trade Association regarding access to information:

### **Inquiry submission number 31**

"To date no briefing regarding the science being used with Bio Regional Planning has been transparently tabled to stake holders. Thus no comment from stake holders has been achieved.

This vacuum of information has not been helpful in any understanding of current process, future process or past process. However we are aware a draft map has been produced. Why in the name of transparency during a planning process that a scientific briefing not be available to Stakeholders, Government? Would it not encourage informed debate?"

### **Concerns regarding potential to achieve conservation aims**

Significant doubts were raised regarding the ability of the Marine Protected Areas identified within the Marine Bioregional Plans to achieve conservation aims. Much of the criticism relates to the focus of researching what currently exists and not applying sufficient rigour to the question of how best to protect and preserve the marine biodiversity. Concerns were also raised with relation to whether adequate risk assessments had been undertaken, particularly considering the transient but potentially devastating impacts of isolated incidents such as pollution from marine vessels such as the oil spill from the *Pacific Adventurer*.

Marine biologist, Dr Diggles raised concerns regarding the apparent lack of applying a risk based approach to the declaration of marine national parks and Marine Protected Areas. Dr Diggles has considerable experience in the application of a scientifically based risk analysis to issues of marine biosecurity and environmental health. He has first-hand experience assessing the scientific basis of the declaration of the Coral Sea Conservation Zone and in his own words, "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."

**Inquiry Hansard, Friday, 13 May 2011, p 11**

**Dr Diggles** - .....it is apparent to me that there is actually a disconnect between the reality of the biological processes that are threatening the biodiversity and 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.

**Inquiry Hansard, Friday, 13 May 2011, p 12**

**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, it is more of a holistic ecosystem approach.

**Inquiry Hansard, Friday, 13 May 2011, p 11**

**Dr Diggles** – 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 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.

Responding to a question from Senator Siewert regarding the scientific data and other inputs used by the government to make the zoning recommendations, Dr Diggles acknowledged there was “a lot of very good information” gathered over a number of years, but also identified a lack of a risk based approach to the management of fisheries.

On further questioning from Senator Colbeck, Dr Diggles explained the origins of the claim by The Ecology Centre that, according to submission 27 “50% of the oceans in the south west of the country will need to be protected in a network of marine sanctuaries to minimise risks to marine life, fish stocks and ecosystems”.

**Inquiry Hansard, Friday, 13 May 2011, pp 15-16**

**Dr Diggles** – 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



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arrangement and added another 20 per cent on top of that for protection of threatened species.

In short, the output of the analysis was in fact dictated by the arbitrary targets inputted by the modellers.

Professor Kearney, Emeritus Professor of Fisheries, University of Canberra cast further doubt over the process of establishing Marine Protected Areas, stating in his submission to the Committee:

**Inquiry submission number 24**

“The wisdom of using area management in marine environments remains largely unquestioned today. Rather its use continues to be based on the unjustified transposition of terrestrial paradigms of national parks into marine environments that are highly interconnected and mostly volatile or even mobile. Marine environments are such that artificial boundaries are largely irrelevant to the ecological processes within them and therefore also often irrelevant to their proper conservation or management. The failure to adequately assess the contribution of area management to the conservation requirements for hugely different marine environments, ranging from high energy ocean beaches to relatively more static deepwater seamounts, further exposes the inadequacies of the process.”

Professor Kearney highlights three fundamental steps to be taken in order for an area to be adequately and appropriately protected:

- all significant threats must be identified (Article 7 of the Convention on Biological Diversity)
- the processes that constitute these threats must be addressed (EPBC Act, Commonwealth of Australia 1999) and,
- the management action that is taken must “not be disproportionate to the significance of the environmental problems” (Intergovernmental Agreement on the Environment, Government of Australia 1992)

Regrettably Professor Kearney also states that these simple steps have not been systematically applied to the declaration of most Australia’s Marine Protected Areas.

The assumption of the Australian government that closing areas to all types of fishing represents total or at least high levels of protection is challenged by Professor Kearney. In fact, it appears that the link between fishing and depletion of fishing stocks is not always as clear cut as some would lead us to believe.

Recent research, funded by the federal government, has raised doubts as to the effectiveness of the proposal to expand marine parks in Western Australia.

“The commonwealth-funded joint study by the WA Department of Fisheries and Murdoch University found fishing activity was not having a major impact on fish stocks in the state's four marine bio-regions.” Sydney Morning Herald, 2 June 2011.

Dr Dan Gaughan from the Department of Fisheries was reported as saying that the Department's recent management of fisheries initiatives have had positive impact on the state's fishing stocks and WA Fisheries Minister Norman Moore is reported to have said that the recent report “raised questions about the effectiveness of the government's proposed marine parks.” Minister Norman has called on Federal Environment Minister Tony Burke to present scientific evidence backing the recently released draft marine parks plan for the southwest of Western Australia.

Other evidence provided to the inquiry supported the potential for sound fisheries management to have positive impacts on fish stocks.

**Inquiry Hansard, Friday, 13 May 2011, p 17**

**Professor Kearney** – 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 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 25 to 15.

The submissions and evidence presented to the inquiry highlights assumptions have been made regarding the establishment of Marine Protected Areas and exclusion of fishing as effective mechanisms for conservation of marine biodiversity. A simple solution has been imposed on a fundamentally complex and dynamic situation. Questions have been raised regarding the apparent rating of fishing activities as of high significance while other issues such pollution, sediment run-off, climate change, coral bleaching, sea temperature increases, ocean acidification, translocation of species, introduction of diseases and a whole range of human activities such as boating, tourism, diving, walking or anchoring on coral appear to be underplayed and are unlikely to respond to the marine planning initiatives.

**Threat to seafood security**

Seafood is an important component of the Australian diet, and despite our huge coastline relative to our population we are now a net importer of fisheries products.

The submission from the Australian Marine Engine Council, submission 17 states: “...in 2007–2008 Australia became a net importer of fisheries products, both in terms of volume and in terms of value.”

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Professor Kearney also raised concerns related to imports:

**Inquiry Hansard, Friday, 13 May 2011, p 19**

**Professor Kearney** – We import 70 per cent of what we have. Australia has no policy for seafood security – none.

**Inquiry Hansard, Friday, 13 May 2011, p 20**

**Professor Kearney** – 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.

Not only should Australia be focussing on national food security and the importance of fish as a healthy protein source, we should not outsource our food requirements to developing nations and indirectly contribute to the depletion of fish stocks in areas with less sophisticated fisheries management practices.

**Conclusion**

The magnitude of the Marine Bioregional network, being almost equivalent to the entire land mass of Australia combined with the need to effectively balance conservation and biodiversity outcomes with the financial and social impacts associated with the modification to fishing activities strongly support the case for such decisions to be made with the safeguard of an additional review of the Parliament.

An amendment to the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011 can provide this, thereby protecting all stakeholders and the general public against the potential for the executive to make politically distorted decisions.

**Senator the Hon. Richard Colbeck**

**Senator the Hon. Ron Boswell**

**Senator Mary Jo Fisher**

