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Senator McEwen, Chair
Senate Standing Committee on Environment, Communications and the Arts
by email to eca.sen@aph.gov.au

Dear Senator McEwan,

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 Australian Recreational and Sport Fishing Industry Confederation Inc (Recfish Australia).

Recfish Australia is the peak representative body for recreational fishers at a national level. Our mission is one voice promoting sustainable fishing and representing recreational fishers at a national level. Recfish Australia's role is to support and further the interests of the 3.4 million recreational fishers in Australia and to support the sustainable development of our \$1.9 billion recreational fishing industry¹. We believe that recreational fishing can be a key component of a healthy outdoor lifestyle which offers a great opportunity to involve the whole family. Recreational fishing is able to bridge the gaps of gender, race religion and social status and provides a common language that all Australians can speak.

Recfish Australia takes a responsible attitude towards sustainable recreational fishing and delivers in several key areas:

- Represent and advocate for the interests of **all** recreational fishers in Australia
- Work to ensure that the allocation of fishery resources in Australia provides for an adequate share for recreational fishers
- Provide representation and advice to governments and others on recreational fishing issues
- Promote and further the development of recreational fishing
- Strive to maintain and where possible increase access to recreational fishing opportunities

¹ National Recreational and Indigenous Fishing Survey 2001

- Participate in the management of recreational and other fisheries and liaise constructively with government and commercial fishing organisations on matters of mutual interest
- Promote and advocate for ethical, sustainable, safe and legal fishing practices
- Promote and advocate for the protection of the environment as it impacts on recreational fishing
- Support and participate in fisheries research.

Summary Points

Consultation with stakeholders	2
Object of Act	3
Threat of fishing	3
Use of the “Precautionary Principle”	5
Principles of ecologically sustainable use	5
Authority representation.....	6
Offences and Penalties.....	6
Strict liability	7
Criminal convictions	8
“Three strikes” rule	8
Power of inspection.....	8

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

We are particularly concerned about the short time frame given for submissions. The Bill is a lengthy document with complex concepts and terminology. As a peak body, we have had limited resources to devote to a detailed analysis of the document. We have further, not had sufficient time to consult with our fishing communities, in particular, those that are most impacted in north Queensland. The information about the Bill was not accessible for a full 24 hours due to an error on the webpage and with only five working days to draft a submission, loss of a full day is inexcusable.

The proposed impacts of this legislation are not confined to the Great Barrier Reef nor north Queensland and have the potential to impact on all recreational fishers when, through the EPBC Act and Regulations, stricter controls on fishing in Commonwealth and State Marine Protected Areas are imposed. As such, we believe that there should be broadscale consultation with recreational fishers or at the very least; there should be further consultation with peak representative bodies of commercial and recreational fishers.

Consultation with stakeholders

My first point of discussion calls into question the comments made by Senator Stephens on Monday 1st September 2008 as reflected in the Senate Hansard. The Senator states “...it (the Bill) has strong support from stakeholders, including both commercial and recreational fishing peak bodies ...”. I have been in discussion with Sunfish Queensland (the peak recreational representative body in Queensland) and the Queensland Seafood Industry Association (the peak representative body for commercial fishing) and neither of these organisations support the Bill as it currently stands. I wonder then, what peak body, the senator has consulted with?

The question is pertinent and goes to the heart of the matter about who is being consulted about this legislation and what the purpose of the legislation is.

Object of Act

Senator Siewert believes that the Act is for the purpose of protecting the Great Barrier Reef Marine Park (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 seek 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...*”

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;

These are not objectives that recognise that this is a multi-use marine park. These objectives have scant respect for the heritage of local communities of which commercial and recreational fishing is a fundamental component. These objectives suggest that the sole purpose of the Marine Park is to preserve the environment, not as a national treasure for the enjoyment of all Australians and tourists but rather as some giant zoo. Perhaps this is not the intent of the legislation but the Draconian penalties and far reaching definitions of activities i.e. fishing hardly seem to encourage these activities.

While I agree with some of Senator Siewert’s sentiment when she states. “...*I urge senators to bear that in mind when they are considering this legislation, that what we are actually talking about is the future of the reef itself, which is threatened and endangered and has many endangered species. If we do not manage it properly, future generations will ask: ‘What were you doing? You were fiddling around while the future of this very, very important place was going down the drain.’*”, that is not the issue of contention, the question is to what extent is fishing a significant threat to the Great Barrier Reef and how far does legislation have to go to protect the environment from the impact of fishing?

Threat of fishing

At the same time that the Representative Areas Program (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 (TAC) 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. I speak with some authority on this matter as I was a Senior Fisheries Scientist with Queensland Department of Primary Industries & Fisheries for the past six years and worked exclusively with fisheries catch and effort data.

As to the sustainability of the fishery in the region, the Australian Government Department of the Environment, Water, Heritage & the Arts 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. The range of management measures combined with the introduction of the RAP was 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 (exported live to Asian markets), the quota for other reef species and Red Throat Emperor remain consistently well below the TAC (34% used in the 2006-07 fishing year)². These are the species available as fresh local fish for Queenslanders and tourists alike which are now in reduced supply.

Consider too, the impact on recreational fishers where for the first time, numbers in northern statistical divisions have decreased significantly between successive rounds (2001 and 2004) of the Queensland Recreational Fishing Survey.³

The point of this discussion is that in terms of applying a risk based approach to the perceived threats facing the GBR, fishing doesn't pose a significant risk.

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)

Insert:

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 definition would also apply to certain types of research which would 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.

² Annual Status Report 2007 – Coral Reef Fin Fish Fishery

³ Results of the 2004 recreational fishing survey of Queensland residents

Use of the “Precautionary Principle”

Regarding 12 Subsection 3(1):

12 Subsection 3(1)

Insert:

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.

Principles of ecologically sustainable use

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.

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. I bring to the attention of the committee the 2006 Review Panel Report⁴ Chapter 8 which identifies Challenges, priorities and framework for the future, in particular 8.3 Stakeholder views and 8.4 Future considerations.

Authority representation

In terms of Schedule 2 – Matters relating to the Great Barrier Reef Marine Park Authority, we support 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 we would like to see the inclusion of a 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 Authority.

Offences and Penalties

With regards to Schedule 6 – Offences and civil penalties,
Item 24 – Offence and civil penalty provisions

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

241. Offences in the schedule apply strict liability to the circumstance that conduct:

- was carried out in the Great Barrier Reef Region (38AA);
- was carried out in a zone (38BA(1)(b), BD(b));
- is not permitted in a zone under a zoning plan (38BA(1)(c), 38BD(d));
- is not permitted under a zoning plan unless notice is first given to a specified body (38BC);
- was carried out in an unzoned area of the Marine Park (38CA(2)); and
- occurred or was carried out in the Marine Park (38DA(1)(b); 38DD(1)(b)).

242. These provisions all reflect a common principle that it should be incumbent on users of

- the Great Barrier Reef to be aware of:
- the existence of the Great Barrier Reef Region, the Marine Park and its zones;
- their location in relation to those areas; and
- the restrictions on use that apply as a consequence of an area being a part of the Region, Park or a zone.

⁴ Review of the *Great Barrier Reef Marine Park Act 1975* Review Panel Report, 2006

243. This approach is taken having considered the Senate Scrutiny of Bills Committee *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, as well as the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, issued by authority of the Minister for Justice and Customs.

Having regard to these documents, strict liability is proposed as it:

- ensures the integrity of the regulatory regime in place to protect the Great Barrier Reef;
- overcomes problems of proof that would otherwise make the regulatory regime particularly difficult to enforce; and
- overcomes a “knowledge of the law” problem.

244. The existence of the Great Barrier Reef Region, Marine Park and zoning plan for the Marine Park is fundamental to and underpins regulation and management of the Great Barrier Reef. The fact that an area is part of the Region, Park or a zone is the framework from which regulatory and management arrangements arise. The boundaries and activities allowed within the Region, Park and its zones are widely publicised, for example, through the free distribution of maps and guides to the activities permitted in particular areas, signposting and other educational measures. Zoning is in place for at least seven years and changes are made through processes involving significant public involvement. In this context, making it incumbent on Marine Park users to be aware of the existence of the Region, Park and zones, their location in relation to those areas and the rules that apply is reasonable and essential to the integrity of the regulatory regime in place to protect the Great Barrier Reef.

245. Proving to a Court that a defendant did not know or was reckless to the fact that an area was a part of the Great Barrier Reef Region, Marine Park or a zone, that they were within such an area and/or that that the conduct they have engaged in is not permitted in that area is problematic. Such matters are within the knowledge of the defendant alone, and proving the contrary beyond a reasonable doubt would require significant and difficult to obtain indirect and circumstantial evidence.

246. The fact that an area is part of the Great Barrier Reef Region, Marine Park or a zone of the Marine Park and the restrictions on use that consequently apply forms a part of the law. The Region is defined by the GBRMP Act. The Marine Park is established through proclamations, which are legislative instruments for the purposes of the LI Act – that is, they determine the content of the law and impose obligations and create rights (see LI Act section 7). Similarly, zoning is established by a zoning plan, which is also a legislative instrument. Allowing people to escape conviction because they were unaware of these legal requirements would allow ignorance of the law to be used as an excuse for criminal behaviour.

247. In applying strict liability to the offence elements identified above, it is not intended to provide for the defence of honest and reasonable mistake of fact to be used in a way that allows ignorance of the law to be an excuse for criminal behaviour, for example, a mistake as to the legal delineation of zones and the activities permitted within zones.

Strict liability

We are most concerned about the interpretation of strict liability as it applies to knowledge of the boundaries of zones where fishing is prohibited. While we acknowledge that maps are available and clear descriptions of the boundaries of zones have been published, the average recreational angler will find it difficult to determine their exact position in relation to a zone. Despite the fact that many fishers who access the Marine Park have access to a Global Positioning System Unit, most are rudimentary units that do not contain information about the boundaries of different zones. More sophisticated units can have detailed maps loaded but these cost \$230. This doesn't help those fishers who have not embraced the new technology nor those that rely on paper based maps.

Boundaries for various zoned areas are based on computer models and as a result do not follow straight lines or align with 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 247 above and trust that honest and reasonable mistakes will not be punished.

Criminal convictions

We also do not support the imposing of criminal convictions for fisheries offences. While acknowledging 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. Recfish Australia commends the introduction of civil penalties and infringement notices but feels that recording of convictions is excessive. At the least, there should be provision for first time offenders to not have a conviction recorded.

On the subject of convictions we are 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. I am no expert of legal matters but we believe that the Rudd Government made an election promise to have these convictions struck from these people's records and this committee should do all in its power to have these convictions removed.

“Three strikes” rule

Items 124 & 125 – Enforcement Provisions

Directions limiting access to the Marine Park

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.

189. 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*.

We also cannot support the three strikes and you are out principle which we find to be incredibly harsh for fisheries related offences. This could potentially have major impacts on those people residing within the boundaries of the Marine Park and while we support the sentiment of punishing repeat offenders we draw analogies with other legislation relating to drink driving offences which do not seem to attract as severe penalties.

Power of inspection

Items 6-87 – Making EPBC Act investigation provisions available for GBRMP Act purposes

Boarding vessels, aircraft, vehicles, platforms (Items 6, 11-16)

112. Subsection 403(2) provides authorised officers with a power to board a vehicle, vessel, aircraft or platform to search for “evidential materials” (see EPBC Act ss406(2)). The GBRMP Act section 48 contains an equivalent power, which will be repealed (see item 122). The power to board and search a vessel etc without warrant remains necessary and appropriate in investigating compliance with the

GBRMP Act given the large area of the Marine Park, the often remote location in which investigations are conducted, and the mobility of vehicles, vessels and aircraft. A requirement to obtain a warrant in such circumstances would unduly hamper efficient and effective investigations.

113 An inspector who has boarded a vehicle, vessel, aircraft or platform may exercise the powers set out in section 406 related to the identification and collection of evidence. The inspector may also conduct a search of a person on the vessel, platform etc, without warrant, for any eligible seizeable items or evidential material. The search is of essentially the same nature as a “frisk search” (see EPBC Act section 413(3)). This power is necessary to ensure the safety of officers conducting searches and to facilitate the efficient collection of evidence. Obtaining a warrant prior to conducting a search is impractical and inefficient given the large area of the Marine Park, the often remote location in which investigations are conducted and the mobility of vessels. Section 406A imposes requirements on the conduct of searches to ensure a person searched is not subjected to undue indignity.

The powers of inspection and seizure vested in enforcement officers seem to us to be Draconian and we note that similar powers are not given to Queensland Boating & Fisheries Patrol Officers who are responsible for policing fisheries regulations throughout Queensland. We cannot accept the argument of distance and remoteness as an excuse for diminishing due process and accountability. Imagine if the Australian navy opened fire on every foreign fishing vessel that they suspected was “about to start fishing illegally”.

In closing, while this Bill appears to modernize and streamline legislation, it does not go far enough to address the recommendations of the 2006 Review Panel Report⁵ 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.”*

This 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 Objective of the Act, this would be possible. As it stands now, the sentiment seems to local communities to be one of “lock it up and leave it”.

Recfish Australia would be happy to present evidence at an inquiry hearing if requested.

Len Olyott ^{Msc}
Chief Executive Officer
8 September 2008

⁵ Review of the *Great Barrier Reef Marine Park Act 1975* Review Panel Report, 2006