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**Submission:**  
**The Great Barrier Reef Marine Park  
and Other Legislation Amendment  
Bill 2008**

**The Australian Fishing  
and Lifestyle Party  
(The Fishing Party – Qld)**

*8<sup>th</sup> September 2008*

## **Executive Summary**

The Australian Fishing and Lifestyle Party (AFLP) – previously known as The Fishing Party Queensland (TFPQ), received calls and complaints from a number of individuals and groups in respect of the amendments & have rushed a submission on a matter of great significance as to the management of our marine and National Parks.

Given the time invested in this process to date and our involvement, as both a party and as individuals with every step of the process, including initial meetings and submissions, attendance before the Review Committee and briefing to both sides of the house and Senators over the last 4 years we must object to the timeframe involved in allowing submissions on this important matter.

2 Weeks is not enough time to compile and submit on such a matter of grave importance to so many people and we protest at the time frame and submit this document in its draft format, along with lack of fine detail, typing and punctuation errors and the like and seek formal extension of time to resubmit a finished document in 48 hours.

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## Political History

*The History of the Great Barrier Reef is not geology or biology – it's purely a story of politics and ideologies*

The Great Barrier Reef Marine Park Authority has a long history of a single minded self serving aim, at the expense of public trust and Minister's scalps while ignoring Auditor General Reports and Departmental reviews, not to mention public opinion.

This Bill comes from the same mould, and will give unheard of powers to an Authority and its enforcement arm which will ultimately be used as a precursor for the management of marine and national parks across the country.

In getting to this point the Authority has done severe damage to the public trust in any government review, public consultation and perhaps to the democratic process in general. This section illustrates the history and breadth of these allegations.

### Chronology and Discussion

**1998** The Commonwealth Auditor General conducts a scathing report of the Authority and explains in part:

*The Marine Park Authority ... also clearly states that it does not consider that fish stocks on the reef are under any danger, and specifically identifies that no reduction in fish stocks has occurred as a result of human activity.*<sup>1</sup>

GBRMPA does not consider that fish stocks on the reef are under danger especially from human interference!

This statement is no surprise. Fishing pressure on the reef is well controlled by several elements, vis:

- ? Commercial fishing licences, quotas, size and catch limits are well supervised by Queensland Fisheries, even to the point of satellite tracking of commercial ships. Very big brother.
- ? Recreational catch and bag limits are managed to limits set by the best available science, again by Queensland Fisheries. These have been revised

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<sup>1</sup> Commonwealth Auditor Generals Report (no 33) of 1998

over the last three years to bring them in line with recently published research, on a species by species basis.

- 2 ? Natural factors: The reef is larger than many countries, the local and tourist population relatively low. The vast majority of the reef is beyond the reach of most private vessels on the best of weekends, and the predominant winds stop most from putting out to sea at all for somewhere between 30 per cent and 60 per cent of days.

It is no surprise therefore that *before* the 2004 review that the total combined commercial and recreational catch within the Great Barrier Reef marine park equates to 17kg per square kilometre per year compared to indopacific averages of 7700 kg per square kilometre per year.<sup>2</sup>

This report by Tony Ayling concludes that the Marine Park Zones have no protective value in that there was no measurable difference in fish populations between fished and unfished reefs (of the much sought after Coral Trout). Based on fourteen years of data this paper is held by GBRMPA, yet apparently ignored.

The 33.3 per cent closures to all fishing concentrated on the accessible areas by asking fishers where they went fishing. As the then Fisheries Minister Senator Ian Macdonald stated<sup>3</sup>, this was effectively closer to 75 per cent closures in some areas.

Thus we conclude that the current catch is now perhaps under 10kg per square kilometre per year and as Dr Starck writes “figures for the GBR show no evidence of decline and the catch per area is less than 1 per cent of what is widely considered sustainable for reef fisheries”<sup>4</sup>

**1998-2000** The Australian Democrats produce an 'Oceans' policy calling for in part:

- A comprehensive network of highly protected zones.
- A significant increase in protected zones of the GBR to 33.3 per cent
- A change from individual species management to ecosystem management.
- Restriction in recreational fishing.
- Restriction in commercial fishing.

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<sup>2</sup> Ayling, A.M. (1997) Long-term trends in reef fish abundance in the Great Barrier Reef World Heritage Area, in: State of the Great Barrier Reef World Heritage Area Workshop, pp. 223-227. GBRMPA Workshop Series 23A

<sup>3</sup> Minister for Fisheries, Senator Ian Macdonald RecFish Workshop Canberra, 27th October 2004

<sup>4</sup> Dr Walter Starck Re: Submission to Review of the *Great Barrier Reef Marine Park Act 1975*, Sept 2005

**1999-2000** The Australian Democrats in a deal with the Howard Government support the Government GST package in exchange for government support for the Democrat's environmental packages, including 33 per cent closures of the Great Barrier Reef and sulphur to be removed from diesel fuel. This was widely publicized at the time.

Further evidence is contained in the Authority's own submission to the 2006 review of the Act, which states at page 32: "the recent rezoning in the Marine Park implements key components of the Australian Government's *Oceans Policy*".<sup>5</sup>

The *Oceans Policy* was a Democrats Policy and not a policy of the government per se so the statement by the authority is telling.

**October 2003** The Auditor General provides a follow up Audit of the GBRMPA to the Government. This states that the GBRMPA wants to increase the highly protected zones six fold (p20).<sup>6</sup>

**July 2004** The GBRMPA RAP comes into force.

There was no scientific proof that any protection was required and if so that 33.3 per cent was the ideal amount. On third is clearly the kind of round number never found in nature. It was merely a political land grab and a nice round number.

Leaving aside the issue of what percentage of protection was required; it was up to GBRMPA to use their expertise to decide which 33.3 per cent. And this is where management's own anti-fishing agenda took a divergence from their appointed task.

Let us for the moment accept that a round number like 1/3 is the ideal amount to "protect". Then the key options were then available were to:

1. Protect the outer, more isolated reefs that were less likely to be visited by fishers or tourists and were most likely to be "pristine" and thus a better Representative Area. *In this way the dual goals of protection and access are achieved most efficiently.*
2. Choose to protect part of each major reef, say leaving the leeward side for the community and the windward side protected *or* protecting say the northern end and leaving the southern end for community use. (A split reef RAP) *In this way the dual goals of protection and access are achieved most effectively.*

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<sup>5</sup> GBRMPA Great Barrier Reef Marine Park Act Review 2005

<sup>6</sup> The Auditor – General Audit Report Commonwealth Management of the Great Barrier Reef Follow-up Audit Oct 2003

3. Locking up the reef areas that are currently more accessible and popular with recreational users and leaving the inaccessible and more pristine reefs unprotected. *In this way the single goal of protection is maximized at the expense of the other goals of access and enjoyment.*

***GBRMPA clearly chose option three, pursuing the option that would have the maximum impact on recreational fishing. (Green zones only ban fishing and the use of PWC's (Jet Ski's). – nothing else.)***

Option 3 effectively locks up much more than the mandated 33.3 per cent. By making the accessible reef areas out of bounds, and leaving the inaccessible reef areas relatively unprotected then the political decision of GBRMPA was to grab much more than Government policy dictated. And recall that this is still in the absence of accepted scientific proof that the reef was facing any significant risk from *Recreational Fishing*. One of the clearest examples of this is the area around Bundaberg.

Recreational anglers in Bundaberg have lost access to some 75 per cent of the reef through RAP. The result is that the remaining 25 per cent is put under 400 per cent more fishing pressure. And as these areas are more isolated greater amounts of fossil fuel is burned on the reef (Outboard exhaust passes through the water). This is hardly an environmentally sound outcome. But it does effectively curtail Recreational anglers.

What then was the aim of GBRMPA management? The Federal Minister for Fisheries, Senator Ian Macdonald accepted some of these issues and addressed them in his speech to RecFish Workshop Canberra on Wednesday 27th October 2004, vis.

*Perhaps the amount locked away is a little bit more than I anticipated, but it has happened. One thing though that did come to my mind, was brought to my mind during the campaign was in the southern part of the Great Barrier Reef around the Bundaberg Gladstone area. The Fisherman there were able to demonstrate to me that about seventy five percent of the reef in their particular area is being shut off And whilst they were happy, well happy probably may not be the right word, while they were prepared to accept that one third or 33 per cent was shut off they thought that seventy five percent was a bit too much. And I thought that they had a point there.*

Later

*Now it is very difficult to change these things and I have made no commitment to change them, I have made a committed to look into it, which I intend to do and to see if there is some way we can get a similar result for the Barrier Reef that makes the access a bit fair.*

Later

*So all of those things will be reviewed We want to do it in a sensible way to see if there is some way we can ensure that the recreational fishing*

*experience, which we are very keen to promote in Australia, isn't sort of locked away for certain groups of Australians ..... only tourists going into the area.*

Later

*Authority there were suggestions that perhaps some of those in the middle order of the bureaucracy who were actually doing the work had different objectives But We have hopefully ...The good thing about GBRMPA is that it was a great teaching experience with the other marine protected areas I am fairly confident that the other areas will get far better outcomes.*

*The previous government was happy to admit (above) that they were bitten by middle level bureaucrats within GBRMPA pursuing their own agenda. Will the same painful fate befall the Labor government? GBRMPA saw the demise of Minister Kemp and the end of Minister Campbell which is why we saw the Coalition's top Minister Malcolm Turnbull take the hot seat. There are those who doubt that Minister Garret could control GBRMPA. This Bill illustrated that the tail is wagging the dog.*

**2004 Federal Election** The then government promises to widen the compensation paid to commercial fishers to restructuring grants to any business effected by the extensive closures. The Authority advised government that the costs will be in the order of \$2m, later revised to \$12m. The actual costs are now over \$255m. Note that these are restructuring assistance grants and not full compensation. The true damage to the local economy is over \$700m.

**August 23 2005;** A review of GBRMPA and the Act is announced.

In response to public outcry at the representative areas program (RAP) a review of GBRMPA is launched. Of the 227 (203 available publically) substantive submissions received, a significant number express anger and disappointment with the dishonest dealings of the public servants leading the rezoning process. One such submission was made by Alan Griggs<sup>7</sup> who writes:

“Darren Cameron and others continually told us that we were to show our most profitable areas and all would be done to preserve them. We were also told at least 10 times that the closures were only 25 per cent. We as a branch and private fisherman both Rec and Pro became very wary of all the miss truths we were told.”

Later

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<sup>7</sup> Griggs, A. Submission to the GBRMPA Review, September 2005



“We were continually told to put our most used and profitable areas on the maps and they would do all to protect it. They did the TOTAL OPPOSITE the best fishing grounds in Bowling Green Bay they took off us and left the least profitable areas alone.”

And further

“We all also put a dummy fishing area North East of a local area known as "Youngla West" we all stated that this was Vitally important to us all, and they increased the green area in include this area, when in fact None of us fished this area. This gave us the impression that NO TRANSPARITY [sic] was in this program.”

### **SUBMISSION**

That the Committee recommends that GBRMPA officers be investigated for breaches of the APS code of conduct, and the Department's apparent lack of willingness to investigate its own officers be a matter of review.

Complaints made directly to Mr David Borthwick Secretary, Department of the Environment and Heritage and to the other members of the review panel during public hearings (and supported by statutory declarations handed up) into the review of GBRMPA. Even though there was clear evidence of a breach of the Australian Public Service code of Conduct (i.e. “behave honestly and with integrity in the course of APS employment”) the Department has refused to undertake any investigation.

Some extracts from the review<sup>8</sup> are below

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.

Nevertheless, managing and deciding between alternative uses of the Marine Park is likely to become much more challenging in the future. In meeting this challenge there will be a need to scientifically and transparently assess the overall level of protection of the Marine Park ecosystem and the likely social and economic impacts of any changes being considered. (P10)

17 The Review Panel recommends that the zoning plan process be made more transparent and accountable by enhancing the process for developing zoning plans through changes to the regulatory framework (see Recommendations 19 to 21) and in administrative arrangements:

21 The concerns expressed by some stakeholders in regard to the Representative Areas Programme point to an underlying need for the zoning

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<sup>8</sup> Department of the Environment and Heritage Review of the *Great Barrier Reef Marine Park Act 1975* Review Panel Report 2006

plan development process to have a higher degree of transparency and accountability such that:

- a) stakeholders are appropriately informed of the overarching objectives and rationale for the proposals
- b) there is sufficient time in relation to the complexity of the proposals for stakeholders to prepare comment
- c) the basis for decisions on alternate use is clear and in the public domain
- d) the social and economic impacts at a local and regional level and how they interact with State and local government initiatives are understood.

**2006**, even after the public concerns with the less than transparent operations of GBRMPA were made clear, the Authority continued to undertake what can only be called deceptive practices. One such example follows

The Authority commissioned a survey in 2006 to conduct a non market evaluation of the Great Barrier Reef. As a client the Authority officers will have been intimately involved in the design of the survey, to be conducted by a Queensland academic from CQU. The survey was endorsed by GBRMPA.

The survey was more than biased – it was intentionally flawed and designed to give a biased result for some unknown purpose - probably to increase the GBRMPA budget. The survey format was a response form. The respondent first read demonstrably false statements such as “commercial fishing has dramatically increased” where as in fact commercial fishing had been at consistent levels for ten years, (controlled by strict quotas) and then fallen in recent years, after the rezoning and buy back of licences.

Question three then asks for the respondent’s opinion about the condition of the reef. This immediately after being told that the GBR is under significant threats. The answers would no doubt be pessimistically biased.

One can only imagine how the results of this question will be used by those who share certain political views e.g.: “*90 per cent of Australians say the GBR has declined*”. That would be a specious argument - the respondents were biased by the information they read, and as members of the general public they have no basis for giving any such opinion on the condition of the Reef.

The survey would not have added to the GBRMPA’s knowledge of the reef, as is their mandate, but was to be used in some lobbying process.

As a further example the survey states that if no money is spent then the reef will decline by 30 per cent, but by spending up to \$20 billion this could be reversed. There is no evidence for any of these propositions.

This methodology is akin to showing photographs of war wounded and asking questions about conscription or traffic accident victims and asking questions about speed limits. Actually it's worse, because the verbal images of say increased commercial fishing were demonstrably false.

Following submissions to the Department of the Environment and Heritage, David Borthwick writes in his letter of 4 July 2006:

“I consider that the abbreviated information supplied to participants included some statements that were of contestable accuracy”

And

“Under these circumstances, I have decided that the survey results will be put aside”

There seems to have been no evidenced of any disciplinary action being taken, as would have been appropriate.

During and after RAP, GBRMPA lead the general public to believe that RAP had “*Fully protected the Great Barrier Reef through a series of marine protected areas*”.<sup>9</sup>

The truth of the matter is that they have removed just one of many impacts on the reef in these Green zones while allowing other, potentially far more dangerous impacts to continue. These more serious impacts include but are not be limited to:

- ? •Tourism visitation
- ? Outboard emissions on tourism boats (over 12 tonnes p.a for a single 150hp two stroke – source OEDA)
- ? •Mainland Run-off including
  - o Waste, pollutants and chemicals from residential and industrial areas
  - o Fertilizers and pesticides from agricultural areas
- ? Nutrient build-up on tourism pontoons from seabird roosting
- ? Fish Feeding
- ? Anchor damage from large tourist vessels
- ? Anchor damage from dive boats and small tourist boats
- ? Sewage discharge from land and resorts
- ? Sunscreen , insect repellent and similar
- ? Crown of Thorns Starfish
- ? Climate Change issues such as global warming

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<sup>9</sup> Minister Ian Campbell, Minister Hansard July 2005

Why we ask, is fishing the only target for lock out? GBRMPA, the Act and the Amendments have all failed to manage these other factors

## The Process

*This entire continues the long tradition of pseudo reviews with real consideration intentionally thwarted by impossibly short time frames*

It will be shown below that the amendments ride rough shod over too many of the basic principles of our Australian democratic system.

The Bill itself ignores by 180 degrees some of the key findings of the very review of the Act which was the starting point for the Bill. The committee should investigate how the course of democracy has become so perverted.

This committee was given only two weeks to report. Clearly an intentionally short process which can only be designed to cut short reasoned debate and public inputs. We find these efforts to truncate debate transparent and disappointing.

The vote to proceed with this review was taken on Monday, the secretariat advised, in response to a direct request on Tuesday afternoon and the information provided by the secretariat only made available on Wednesday, with submissions closing Monday next.

None of us can recall getting a response from government in under two weeks and sometimes months, yet the Senate gives the public three or four working days? This is not the action of a house of review that has any genuine interest in reasoned debate.

### **Recommendation**

That the Committee make a complaint to the Senate that there is insufficient time and that the committee accepts and considers all submissions, even after the nominal closing time.

## Goal

*This Bill signals a fundamental and alarming shift in the Australian paradigm. Australians are proud to say that our beaches and parks are open to all to enjoy responsibly, unlike in other countries where private ownership of beaches is the norm. With this Bill the nominal ownership of our outdoors shifts from the public to a narrow group. It changes from “our” park to their museum.*

The Object of GBRMPA as expressed in the Act

*To provide for the protection, wise use, understanding and enjoyment of the Great Barrier Reef in perpetuity through the care and development of the Great Barrier Reef Marine Park.<sup>10</sup>*

The goal proposed by the Bill is, in part:

### **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:

This seemingly sensible amendment if passed, is a change in the way we see Australia. This Bill gives away and shared and wise use of a cornerstone National park, replacing it with “protection and conservation”. This does not bode well for future National Parks management as “parks” of the “people”. Replacing them as zoos of the few. If this amendment is accepted the family orientated activity of recreational fishing and boating, will potentially become part of our history, rather than our future. It will further damage the \$1.5b industry and the local economy and a nail in the coffin of Australian lifestyle.

It will be the day that that bureaucracy takes over from the will or the people

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<sup>10</sup> Adopted MPA 90, October 1986 (amended MPA 91, November 1986; MPA 115, November 1989; MPA 118, July 1990; MPA 129, October 1991; MPA 147, April 1994; MPA 148, June 1994; MPA 149, August 1994)

Australians hold to the notion that no one owns the shore, the oceans and the outdoors. They are an inalienable right that is part of our unwritten constitution.

Bearing in mind that some 300,000 or north Queenslanders go fishing once a year (or they did before the re-zoning) then this very large proportion of the community at least, hold to the value of the Common, the community

This object, combined with the “precautionary principle” (which removes any obligation for the Authority needs to use science to justify closures) will hand this over zealous Authority a blank cheque.

We saw how they used a blank cheque in the last rezoning. From an Authority which stated that there was no risk to the reef from human activity they took a mandate for 335 closures and by deceit, found the most accessible fishing spots – focussing on these for green zones while ignoring pristine isolated reefs

#### **SUBMISSION**

**THAT THE PROPOSED OBJECT OF THE ACT BE REJECTED AND  
THE CURRENT OBJECT REMAIN IN FORCE.**

## Precautionary Principle

*No one asked for the precautionary principle except GBRMPA*

The GBRMPA asked the precautionary principle to include in the amendments in its own submission to the review.<sup>11</sup>

## Burden of Proof

The memorandum:

67. The proposed new offence provisions includes strict liability elements, such that a prosecutor will not have to show (where relevant to the offence in question) that the accused knew or was reckless as to the fact that an action is taken in the Marine Park or that an action is taken outside of the Marine Park but in the Australian jurisdiction. The use of strict liability in this way is proposed 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 established as it:

- ? ensures the integrity of the regulatory regime applying to the Great Barrier Reef;
- ? overcomes problems of proof that would otherwise make the regulatory regime particularly difficult to enforce;
- ? overcomes a “knowledge of the law” problem; and
- ? goes, in part, to a jurisdictional element of the relevant offences.

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<sup>11</sup> GBRMPA *ibid* p26



Definition of Fishing`

*This is the stuff of thought police. These guys are so keen to demonize ordinary Australians that they leave no room for common sense.*

### **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 Bill only serves to move the definition within the Bill, the purpose of which is to ensure the easier prosecution of “offenders” without adequate proof of the offence (see explanatory memorandum; Item 2: 67) But now the Senate finally has the time for the democratic processes to review this Bill. This is an amendment Bill and it opens it up to a clean up.

The previous government seemingly made several errors of judgement in the drafting of the legislation (or let the bureaucrats pull the wool over their eyes). Just because it is a past mistake it does not need to continue.

It does not matter if this definition has not been abused before – for under the current zealous climate it has the capacity to be.

### **SUBMISSION**

***fishing*** means any of the following:

- (a) taking fish;
- (b) the use of equipment that is designed specifically to take fish, and only if it is deployed and in the water in a way that it could be anticipated to take fish.

**Senator SIEWERT<sup>12</sup>**

The definition covers:

searching for, or taking, fish;

attempting to search for, or take, fish;

engaging in any other activity that can reasonably be expected

to result in the locating of, or taking of, fish;

... ..

any operations at sea directly in support of, or in preparation

for, any activity described in this definition;

We believe that this is a reasonable definition of fishing

Dear Senator Siewert, fishing may be a subset of what is captured by thus but also captured are the following activities in a green zone:

1. The wearing of polarizing sunglasses (they are used to use under the glare of the water, and used for sight fishing – and by tourists)
2. Using a sounder – these devices show a representation of the bottom and also show fish by echo sounding. These are common and can be purchased from Big W for \$125. These are a crucial safety device and if a boat owner or master turned it off when crossing a known reef area she or he would be liable. If a ship ran into a reef, partially because they had their sounder turned off then they are liable under the GBRMPA legislation. This is an impossible catch 22.
3. Similarly to the above, the use of a GPS unit. In some of the prosecuted cases the Magistrate admonished the convictee for not using or knowing how to use his GPS. However a GPS locates reefs (if you buy the extra maps as most do) and so finding the reefs where fish live would be ‘finding fish’ and illegal. Turning them off when crossing a reef area will certainly mean more groundings. Many small boat owners buy combines Sounder / GPS units. One cannot be turned off without the other.
4. On the same basis as above so would looking at a map be illegal – they show reefs and thus fish.
5. Glass bottomed boats and tourist ‘submarines’
6. Snorkelling and scuba diving
7. Whale watching
8. Thawing frozen bait on deck while passing over a green zone on the way to fishing grounds
9. Preparing in any way fishing equipment, tying knots in a fishing line while passing over a green zone on the way to fishing grounds.
10. laying out a line - fishing line gets twists and lays unevenly on a spool - the way to remedy this is to tie a small weight (not a hook nor bait) and this out behind a moving boat, then reel in all back in under control and the pressure of the moving water.

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<sup>12</sup> Hansard Monday 1<sup>st</sup> September 2008

All of the above clearly come within the definition

Some in Queensland have suggested that they will take civil action against say, a whale watching tour, the entire ship of crew and passengers to point out the folly of this legislation. We have counselled them against such action.

## Criminal Convictions

*I would like to believe that the situation that meant that a first offence of recreational fishing in a green zone carried a mandatory criminal conviction, with the recipient wearing the burden of a criminal record for life, was a genuine unintended consequence of the Act. But from what I have learned about GBRMPA I doubt it. These people are out of touch – on a different planet. How do you compare catching a fish to speeding in a school zone? We care more about a bloody fish? that's BS -signed: a Qld angler and parent.*

The EPA Documents disappoint in so many fundamental areas that they are not robust or sound.

### **Senator STEPHENS**

*“The amendments sought by the opposition would overturn the convictions of all people caught fishing illegally in the Great Barrier Reef Marine Park in the period from 1 July 2004 to 14 December 2006—both recreational fishers and commercial fishers. One version of the opposition’s amendments would, if passed, result in the legislature granting pardons, currently the prerogative of the Governor-General. In moving this way, the opposition attacks the separation of powers that underpins our constitutional democracy, blurring the lines between parliamentary and executive powers and the independence of the judiciary, and setting of course what would be a very dangerous precedent”.*

Senator we say that many of these convictions were unintended consequences of the Act, made by parliament, a “mistake” if you will. And Australians expect “honesty” by their politicians. We don’t mean “truthfulness” but ‘honesty’ in that peculiar Australian way of owning up to your mistakes. Premier Beattie used this very successfully with his frequent “mia culpa” pleas.

If it was a mistake to have a compulsory criminal record for fishing in the wrong spot, well fix it. It has been “fixed” since the 15<sup>th</sup> December 2006, so how can you tell these people that it is “right” “fair” and Australian that these convictions stand?

They don’t understand the separation of powers. Not even one long standing Premier of Queensland did.

The judiciary won’t be offended. Some were surprised or even unhappy that they had no option but to record a conviction, when in criminal cases – real crimes like assault and theft, they did have their discretion in tact.

IF this was not a mistake, as the Australian Greens would have it, then we have become a sad and twisted society with our priorities out of place.

We ask the panel to consider this. On a one to ten scale, ten being the worst offence and one being trivial where do you place the following:

- ? Speeding through a school zone
- ? Parking offence
- ? Common assault – minor injury
- ? Stealing as a servant
- ? Shoplifting
- ? Fishing – without catching a fish in a green zone
- ? Fishing - catching say 3 fish in a green zone
- ? Fishing - catching say 3 fish in a yellow zone

**Senator SIEWERT**

*...13,000 dugongs—Australia’s entire population is estimated to be around 90,000, so it is a*

The Senator seems to be unaware of the 1,296 dugong<sup>13</sup> taken by traditional hunters in Queensland alone each year, and the zero dugong taken by noon traditional fishers (though the writer is forth generation and seems like a tradition to me)

as threatened

The Senate should be aware of how these “threatening” terms are bandied about. The World Conservation Union (IUCN)<sup>14</sup> has calculated the percentage of endangered species as 40 percent in 2006.

“Threatened” is the lowest level of danger. The scale goes

1. delisted
2. threatened
3. endangered
4. extinct.

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<sup>13</sup> Fisheries Research and Development Corporation The National Recreational and Indigenous Fishing Survey Project No. 99/158 2002

<sup>14</sup> IUCN Red-list statistics (2006)

*“... I can appreciate that having a criminal conviction on your record can lead to problems or you and is scary. Just ask the thousands of people that have convictions on their records for protesting to protect the environment”.*

We assume that the senator is referring to Greenpeace type activists. And we guess that their crimes include intentional trespass, vandalism, graffiti etc. All of these actions were intentional and publicity seeking AND the judge had, and sometimes exercised the discretion of not recording a conviction.

Sixty year old fishermen were not given so much courtesy by the legislation as produced by the previous government.

### **Statistics**

We would like to submit Appendix B in evidence. It is a fifty page document summarizing all recreational anglers taken before the courts for green zone infringements. It is not complete but updated as at 8 March 2006. So this is about one third of the reported 324 convictions.

The document is apparently produced by GBRMPA and was handed to one defendant just before his court appearance as he put it, *‘in a blatant attempt to intimidate me’*.

Leaving that aside, it is curious that GBRMPA kept such a document with such detail and enthusiasm.

Given that this document represents all matters until March 2006, and that is one third of all convictions, it is arguably a representative sample.

Of the 125 recreational fisher "defendants" listed in the file:

- ? There were 122 criminal convictions recorded, \$122,381 issued in fines, with a mean (average) of \$979.00 per fine. The most common fine (Mode) was \$1000, with the largest fine recorded at \$2000 and the smallest \$200.
- ? There were only 19 events where a fish was caught (for a total of 48 fish), across the 125 offenders.
- ? Of the convictees whose gender was provided, 4 were female and the rest male.
- ? Around 1/5 (one fifth) of the convictees were of retirement age and almost 10 per cent of convictees were out on a family (with minors) fishing or sightseeing trip when apprehended.
- ? Almost 61 per cent of convictees were listed as the master of the vessel while the another 32 per cent were listed as passengers - the balance were not so described.

- ? Only 15 per cent of those convicted carried a GPS or maps (many admitted not knowing how to use one). More than one in three of those convicted alleged at the time of apprehension that they did not know they were in a no fishing zone.
- ? Over 10 per cent of those convicted alleged to have no knowledge of green zones or no fishing zones and relied on advice from others including the master or navigator.
- ? Only 7 per cent admitted to having knowledge of green zones with only half of those admitting they knew they were in a green zone - but fished anyway.
- ? 22 per cent of convictees were listed as fishing with a fishing rod while 20 per cent fished with a handline.

The memorandum:

67. The proposed new offence provisions includes strict liability elements, such that a prosecutor will not have to show (where relevant to the offence in question) that the accused knew or was reckless as to the fact that an action is taken in the Marine Park or that an action is taken outside of the Marine Park but in the Australian jurisdiction. The use of strict liability in this way is proposed 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 established as it:

- ? ensures the integrity of the regulatory regime applying to the Great Barrier Reef;
- ? overcomes problems of proof that would otherwise make the regulatory regime particularly difficult to enforce;
- ? overcomes a “knowledge of the law” problem; and
- ? goes, in part, to a jurisdictional element of the relevant offences.

## SUBMISSION

We ask that the committee review Appendix B particularly in relation to the facts of each case and the judges reported comments. We submit that the convictions issued were an unintended consequence of the Act, that many (in fact the greatest majority) of the convictees were first time offenders; with previously unblemished records and that the judges were given no options under the ACT but to issue criminal convictions.

We submit that the definition of fishing retain its current position within the Act and not moved for the sake of easing the burden of proof from

prosecuting officers. We further submit that the official definition of fishing should be changed to reflect a more accurate representation of this activity – rather than a catch-all description. The moving of the definition into the penalties section of the Act opens the possibility and increases the probability of further unintended consequences occurring. We also submit that the burden of proof belongs to those that prosecute the law, that citizens have the basic right of innocence until proven guilty. We submit that the majority of offences occur due to honest mistake or at the most recklessness on behalf of offenders and not criminal culpability and that the penalty should equate to the potential harm caused by such recklessness. In this case a warning or fine is probably a sufficient deterrent – except for in the case of repeat and extreme wanton and callous disregard for the law – in the case of which existing penalties are sufficient. That the

We also support the amendment 5550 (version 1) proposed by *Senator Macdonald and Senator Boswell* where they ask that people who were convicted under Section 38CA have their convictions treated as spent convictions. It does not seem fair that because the court had no choice other than to issue a criminal conviction that a grandfather taking his grandkids out in the tinny for a days fishing with no GPS and no way of knowing they had drifted into a green zone could end up with a criminal conviction and now struggling to get visa or insurance



## Conclusion

This submission is on behalf of the recreational fishing community of Australia, the twenty five percent of Queenslanders who fish once a year and the 30,000 Queensland voters who gave us the responsibility of representing their rights in the political process.

To date, AFLP has been encouraged by the feedback received from Minister Boyle's office and the acknowledgement that the GBR rezoning has distanced many individuals and groups from the public consultation process.

We call on the EPA not to make the same mistakes as GBRMPA.

To listen, evaluate and recognize sensible ideas, which strengthen the conservation objectives of the park without destroying the lifestyles of individuals and the businesses, which service the recreational fishing industry.

AFLP is prepared to make itself available for personal interaction with the decision makers if and when required.

Yours Faithfully

Kevin Collins  
Chairman

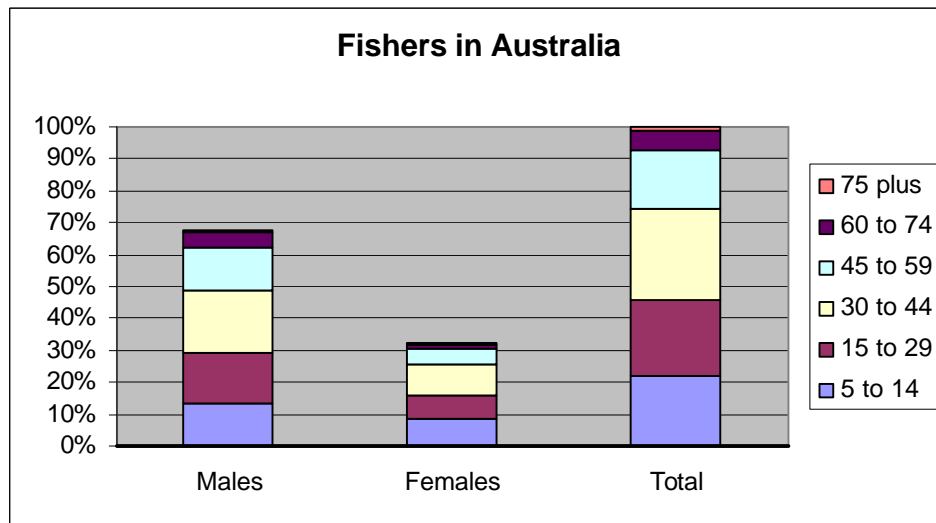
# Who goes fishing?

## *Fishing is everyone*

### Women fish too ... and the youth

Recreational anglers are not just men over 45 - they are just 19 per cent of all who went fishing over the last year.

- ? 20 per cent of all Australians go fishing
- ? 32 per cent of all anglers are Women.
- ? 52 per cent of all anglers are under 30.

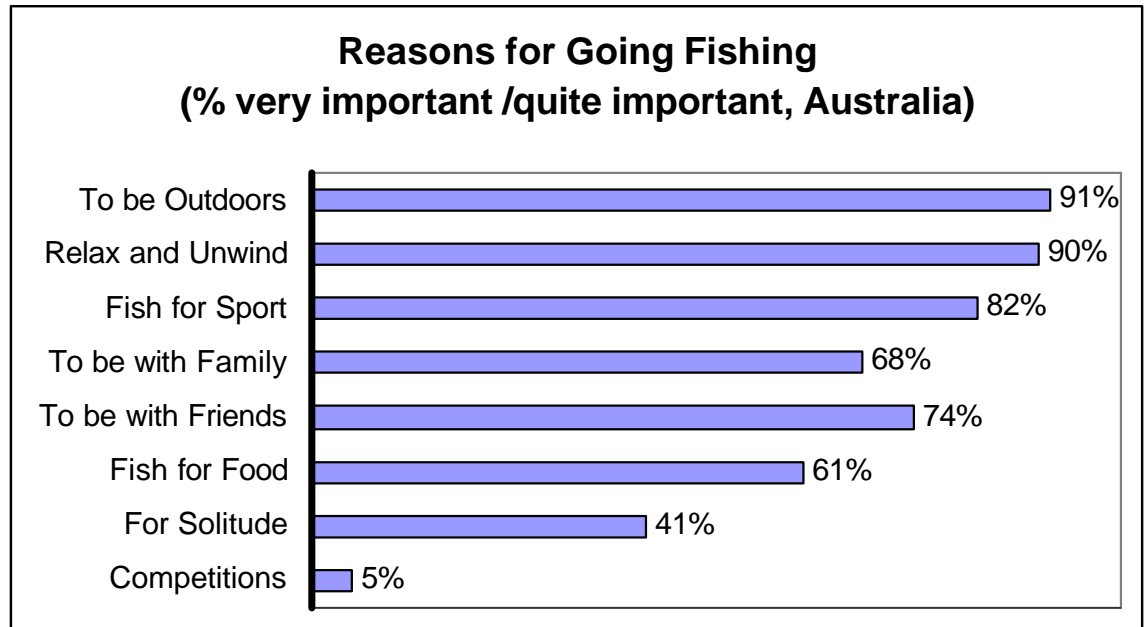


	Males	per cent of pop	Females	per cent of pop	Total	per cent of pop
5 to 14	444,675	33.2 per cent	289,026	22.8 per cent	733,701	28.1 per cent
15 to 29	547,232	27.0 per cent	252,560	12.7 per cent	799,792	19.9 per cent
30 to 44	643,710	30.7 per cent	319,824	14.9 per cent	963,534	22.8 per cent
45 to 59	448,380	25.9 per cent	167,359	9.7 per cent	615,739	17.8 per cent
60 to 74	172,677	17.7 per cent	46,628	4.5 per cent	219,305	11.0 per cent
75 plus	26,368	7.2 per cent	4,549	0.9 per cent	30,917	3.5 per cent
<b>Total</b>	<b>2,283,042</b>	<b>26.7 per cent</b>	<b>1,079,946</b>	<b>12.4 per cent</b>	<b>3,362,988</b>	<b>19.5 per cent</b>

Source: The National Recreational and Indigenous Fishing Survey FRDC Project No. 99/158

## *Why do people go fishing?*

**Fishing is all about pastimes that increase the health of society**



Source: The National Recreational and Indigenous Fishing Survey FRDC Project No. 99/158 07 47713066

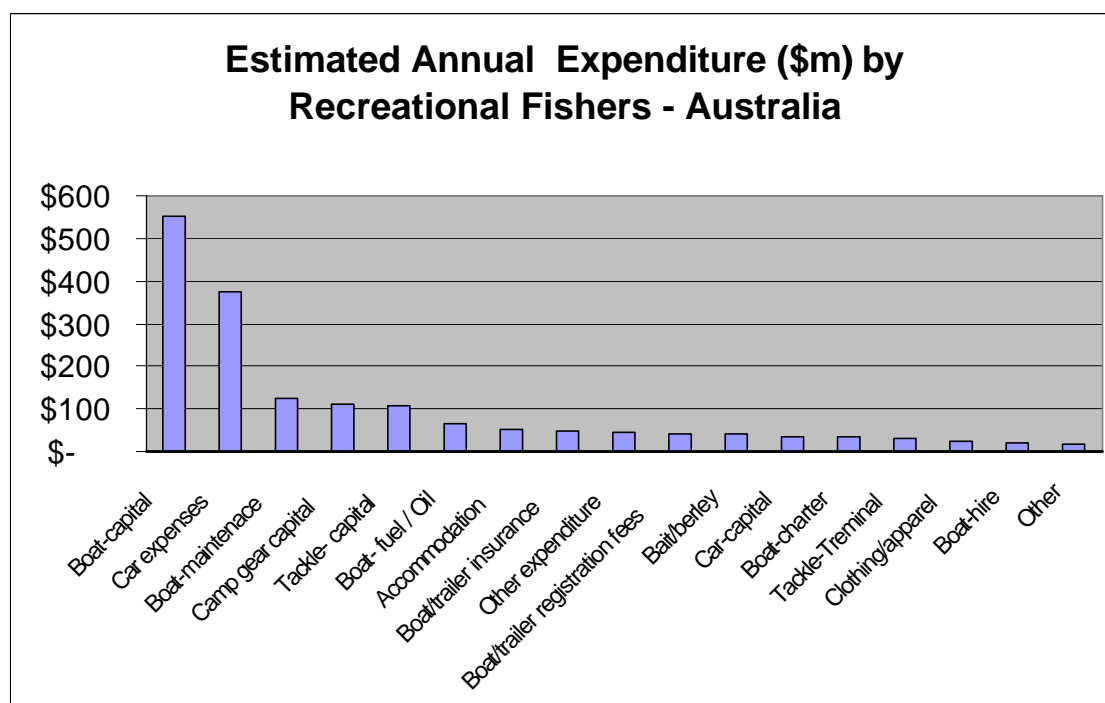
- More boat owners said their health is excellent or good (83 per cent) than did non-boat owners (77 per cent).
- Sixty seven percent of boat owners said having a boat has contributed to their well-being.
- Boat owners experience greater self-esteem (+10 per cent), ability to enjoy life (+9 per cent) and a better sex life (+7 per cent).
- Non-boat owners are more prone to feeling useless (+8 per cent), lonely (+7 per cent) unhappy (+5 per cent) and fatigued (+ 4 per cent).
- Nearly two-thirds of boat owners said owning a boat has brought their family closer
- Most boat owners said the benefits of owning a boat include being outdoors (89 per cent), spending time on the water (85 per cent), being able to unwind and leave pressures behind (79 per cent) and finding tranquillity (71 per cent).

Source: Impulse Research Corporation 2003

## *What does Recreational Fishing mean to the economy?*

**Fishing expenditure is \$1,854 m p.a. and \$400m in taxes**

Fishing GST is \$185 million each year, and fishing accounts for \$220m in Fuel excise.



Source: The National Recreational and Indigenous Fishing Survey FRDC Project No. 99/158

