



EDOs of Australia

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20 September 2017

Australian Marine Parks Management Planning Comments
Department of the Environment and Energy
Reply Paid 787
Canberra ACT 2601

By email: <mailto:managementplanning.marine@environment.gov.au>

Dear Marine Parks Management Team,

Draft management plans

EDOs of Australia welcome the opportunity to comment on Australian Marine Parks draft management plans. EDOs of Australia is a network of community legal centres across Australia that specialise in public interest environmental law. We help people to use the law to protect the environment. We provide legal advice and representation, legal education and policy and law reform advice.

We note that EDOs of Australia has previously made comment on marine bioregional planning, including zoning of individual marine parks. We refer Parks Australia to the following:¹

- *Submission on the reports of the Commonwealth Marine Reserves Review, 31 October 2016*
- *ANEDO Submission on the Commonwealth Marine Reserves Review, 31 March 2015*
- *ANEDO Submission on the Coral Sea Commonwealth marine reserve proposal, 27 February 2012*
- *ANEDO Submission on the Commonwealth marine reserves network proposal and draft Marine Bioregional Plan for the Temperate East Marine Region, 21 February 2012*

This submission focusses on issues of concern that apply across all draft management plans and Marine Parks, namely:

- Proposal to change from Marine Reserves to Marine Parks;
- Proposed zoning arrangements; and
- Proposed management actions.

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1. Proposal to change from Marine Reserves to Marine Parks

EDOs of Australia strongly supports the proposal to improve consistency in the language used to describe our marine protected areas. The use of different terms to describe the same levels of marine protection across different jurisdictions has led to significant community confusion in some areas. For this reason, we **support** re-naming Marine Reserves as Marine Parks and encourage Parks Australia to work with state and territory counterparts to further improve consistency in naming of marine protected areas.

2. Proposed zoning arrangements

EDOs of Australia is extremely concerned by, and does not support, the low levels of protection for marine environments as described in the current draft management plans and zoning arrangements. These levels are significantly reduced from previous proposals.

In our view, the current proposals fail to protect a comprehensive, adequate and representative sample of marine environments and fail to meet the objects of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, including:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
- (c) to promote the conservation of biodiversity; and...*
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities;*

The proposed management plans fail to meet the principles of ecologically sustainable development, including the precautionary principle and inter-generational equity. Each draft management plan summarises the pressures facing the respective Marine Park, and it is clear that there are already significant pressures acting on our marine environment. In the face of the rising threat from climate change, more must be done to support the health and resilience of the marine environment and its inhabitants.

EDOs of Australia **recommend** that the final management plans include National Park zones that reflect:

1. Those areas proposed for National Park zones in the 2012 marine reserve process; *plus*
2. Additional areas proposed as National Park zones in the current draft management plans; *plus*
3. Those areas recommended for National Park zone status by EDOs of Australia in previous submissions. We refer Parks Australia to our *Submission on the reports of the Commonwealth Marine Reserves Review* (attached as **Appendix 1**) which contains a summary of those areas recommended for protection.

In this regard, we reiterate the importance of National Park zones (IUCN II or sanctuary zones) as providing a much higher level of protection for marine environments than Habitat Protection zones. Independent scientific research has consistently demonstrated that

National Park zones provide significantly more protection for marine species than the partial protection provided under Habitat Protection zones.

We note that the finalisation of management plans is intended to enable “a range of activities to be conducted that would otherwise be prohibited or controlled by the EPBC Act and EPBC Regulations (Schedule 1).” In this regard, it is important that zoning arrangements are sufficiently robust to ensure that the objects of the EPBC Act are met. We provide the following overarching comments on zoning arrangements:

- Mining and associated infrastructure should not be allowed anywhere within Marine Parks. In the event that mining is permitted in Marine Parks, construction and operation of pipelines should not be permitted in or adjacent to National Park zones;
- Given the associated biosecurity risks, ballast water discharge and exchange should not be allowed within Marine Parks, but at an absolute minimum should not be allowed within National Park zones;
- Disposal of waste from vessels (compliant with MARPOL) should not be allowed within National Park zones;
- No form of trawling should be allowed in Habitat Protection zones; and,
- Any proposals to enable the Director to authorise new activities should be limited to activities that are consistent with the objects of the relevant zone.

We note that the draft management plans provide for:

“the Director to issue class approvals to authorise a specified class of activities by a specified person or class of persons where the activities are generally done in the same way by all persons conducting the activity. This can include activities that have been authorised under Chapter 4 of the EPBC Act or effectively assessed and authorised under other government or industry processes.”

EDOs of Australia has written extensively in relation to concerns with delegation of Commonwealth environmental obligations to states, territories or bodies such as National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**).ⁱⁱ Given the complex transboundary challenges that face our marine environment, it is vital that the Australian Government retains a strong leadership role and retains responsibility for implementing standards and protections.

3. Proposed Management Actions

We note that each draft management plan includes management programs, outcomes and actions for the relevant marine park. We welcome proposals to strengthen management of the marine environment. Again, we do not provide detailed comment on each of the proposed management actions but provide the following overarching comments:

- We **support** actions to actions to improve awareness, understanding and support for marine parks and park management. A key component of any such program must be to ensure that the broader public understands the vital role that National Park zones plan in protecting the marine environment. Any “customer focussed approach to tracking the aspirations and concerns of stakeholders in relation to marine parks” must not come at the expense of science based protection for marine environments.

- We **recommend** that it is made explicit that actions to provide for and promote a range of environmentally appropriate, high-quality recreation and tourism experiences and contribute to Australia’s visitor economy must not negatively impact on the values or environment of the marine park.
- We **support** actions to recognise and respect the ongoing cultural responsibilities of Indigenous people to care for sea country and support multiple benefits for traditional owners.
- We **support** actions to provide necessary scientific knowledge and understanding of marine park values, pressures, and adequacy of responses for effective management.
- We **support** actions to provide for efficient, effective, transparent and accountable assessment, authorisation and monitoring processes to enable sustainable use and protection of marine park values. However we note our concerns in relation to identifying an approach to regulation and decision-making that may involve delegating Commonwealth authorisation processes to state or territory governments or bodies such as NOPSEMA.
- In relation to compliance, EDOs of Australia does **not support** a “decrease in the number of enforcement incidents” as a stand-alone measure. Rather the outcome sought should be “a decrease in the number of non-compliances” which is achieved by a range of appropriate tools, including increasing voluntary compliance and using enforcement measures as required.

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Yours sincerely
EDOs of Australia



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ⁱ All submissions are available at www.edo.org.au.

ⁱⁱ We refer Parks Australia to those submissions which are available at www.edo.org.au.



EDOs of Australia

Submission on the reports of the independent Commonwealth Marine Reserves Review

31 October 2016

EDOs of Australia (formerly ANEDO, the Australian Network of Environmental Defender's Offices) consists of eight independently constituted and managed community legal centres located across the States and Territories.

Each EDO is dedicated to protecting the environment in the public interest. EDOs:

- provide legal representation and advice,
- take an active role in environmental law reform and policy formulation, and
- offer a significant education program designed to facilitate public participation in environmental decision making.

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Introduction

EDOs of Australia welcome the opportunity to comment on the reports arising from the independent review of Commonwealth Marine Reserves.¹

EDOs of Australia is a network of community legal centres across Australia that specialise in public interest environmental law. We help people to use the law to protect the environment. We provide legal advice and representation, legal education and policy and law reform advice.

We note that EDOs of Australia previously made comment on two regional reserve proposals and the initial call for submissions for the Commonwealth Marine Reserves Review. We refer Parks Australia to the comments made:

- *ANEDO Submission on the Coral Sea Commonwealth marine reserve proposal, 27 February 2012 – Attachment 1*
- *ANEDO Submission on the Commonwealth marine reserves network proposal and draft Marine Bioregional Plan for the Temperate East Marine Region, 21 February 2012 – Attachment 2*
- *ANEDO Submission on the Commonwealth Marine Reserves Review, 31 March 2015 – Attachment 3*

Building on our previous submissions, this submission makes overall comments regarding the planning and zoning proposals, policy implementation and specific impacts (climate change and mining); and brief comments relating to specific bioregions.

1. Overall comments regarding the Review

Planning and zoning proposals

The Expert Scientific Panel stated that:

*‘(t)he ESP is satisfied that the marine bioregional planning programme, which was based on the Integrated Marine and Coastal Regionalisation of Australia and complemented by scientific workshops, peer-reviewed publications and literature reviews, was a sound basis and drew upon the best available information for designing the CMR networks’.*²

However despite this foundation of best available information, the current proposals will weaken marine protection in a number of locations. The proposals fail to address significant concerns with the existing plans, such as the under-representation of a number of marine habitats in sanctuary or no-take, zones.

¹ Specifically the Commonwealth of Australia (2016) *Commonwealth Marine Reserves Review Report of the Bioregional Advisory Panel*, the *Commonwealth Marine Reserves Review Report of the Expert Scientific Panel* and the *Commercial fishing displacement under the Panel - recommended Commonwealth marine reserve zoning scheme*.

² Commonwealth of Australia (2016) *Commonwealth Marine Reserves Review Report of the Expert Scientific Panel*, p. 1

We are particularly concerned that the Review proposes:

- no overall increase of high level/IUCN I and II protection on Australia's continental shelf;
- a decrease in the overall protection (IUCN I and II) for the slope, deep ocean and south west region; and
- in the other four regions, high level/IUCN I and II protection for the continental shelf remains below 3%, with the Temperate East at 0%.

As discussed in our March 2015 submission, it is vital that key laws, policies and principles that should underpin marine reserve planning and management are adequately applied in *each* marine region. EDOs of Australia remains concerned about the ongoing failure to address the following issues at the national level.

ESD and the precautionary principle requires application of a network of Comprehensive, Adequate and Representative (**CAR**) sanctuary areas as described in the NRSMPA Guidelines. The current proposed zoning falls short of providing a CAR network and the network of Marine National Park Zones (**MNPZs**) should be expanded. This shortcoming remains, despite the Expert Scientific Panel noting:

'There is a large body of scientific literature that clearly demonstrates the value of no-take zones (Marine National Park Zones and Sanctuary Zones in CMRs) for biodiversity conservation and as scientific reference sites to measure change within and outside the CMR estate'.

and concluding that:

'no-take zones are arguably the most effective biodiversity conservation measure'.

The Expert Scientific Panel also discussed the fact that each reserve should include at least one MNPZ, and that a significant sample of each primary conservation feature and each provincial bioregion be included in at least one MNPZ of an appropriate configuration and size to meet conservation objectives.

Policy implementation

Australia's international obligations should be more clearly reflected in the design of the marine reserve network, particularly in relation to: the *Convention on Biological Diversity*; the programme of work on marine and coastal biodiversity outlined in the Conference of the Parties 4, decision IV/5 to the Biodiversity Convention; the IUCN *Guidelines for Applying Protected Area Management Categories* (2008); and the 2011 *Guidelines for Applying the IUCN Protected Area Management Categories to Marine Protected Areas*.

Commonwealth legislation and policy, specifically the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, the *EPBC Regulations* (in particular Schedule 8: *Australian IUCN reserve management principles*), the *Guidelines for Establishing the National Representative System of Marine*

Protected Areas 1998 (NRSMPA Guidelines), and the *Australian Biodiversity Conservation Strategy 2010-30* should be more holistically addressed. The objects of the EPBC Act regarding Aboriginal people should also be better reflected in the Plan's objectives. EDOs of Australia note the particular opportunities for Aboriginal employment in the management of marine reserves in the North region.

Policy implementation and the effectiveness of proposed zoning will be highly dependent on whether sufficient resources and staff are allocated to undertake monitoring, compliance and enforcement activities.

Addressing specific impacts

In designing a network that builds resilience to climate change impacts, and to other stressors that are likely to hinder species' adaptation to climate impacts, the aim must be to ensure that the network will facilitate the conditions necessary for species and ecosystems to adapt to warming temperatures, acidification, altered currents, increased storm activity, changes in salinity, and changes in rainfall and runoff. A full range of depths (as acknowledged by the current Goals for the Review) and at a range of latitudes must be protected.

It is also vital for the future protection of the marine environment that more areas are protected from mining activities. Clear protection zones, the design of which also considers potential noise impacts, that expressly exclude mining are needed.

2. Specific bioregion comments

Coral Sea Network

We repeat our previous key recommendations for the Coral Sea Network here. For more detail on these issues please see our original submission:

- All reefs, shoals and cays must be included in the proposed MNPZs;
- Habitat crucial to the continued survival of shark species and Nautilus must be included within the MNPZs;
- All seamounts must be included in the MNPZs;
- Commercial fishing practices must demonstrate that they can be conducted in a sustainable manner;
- An assessment regarding the impacts of shipping vessels on the MNPZs should be undertaken. The results should guide management of vessels in the marine reserve;
- Hand collection should be managed in accordance with the precautionary principle; and
- Areas of high ecological significance must be protected from all forms of fishing.

In relation to the specific proposals in the *Report of the Bioregional Advisory Panel*, we submit that Parks Australia should:

- Reject the proposed loss and fragmentation of the large MNPZ including the fragmentation of the MNPZ between Mellish and Kenn Reefs and the removal of protection between Diane Bank and Osprey Reef;
- Reject the proposed loss of protection for Osprey Reef. Osprey Reef needs high level MNPZ protection in order to deliver economic security to the valuable dive industry;
- Reject the proposed loss of protection for Bougainville Reef, and seek expanded protection at Bougainville to over 100km² by expanding the MNPZ to include the east coast's only identified whale shark aggregation site; and
- Reject the reduction in protection for the Coral Sea, including proposed changes to longlining, mid-water trawling, demersal longlining and prawn trawling, and the level of protection afforded to Marion Reef.

Temperate East Network

We note the following observation from the Expert Scientific Panel:

'Representation of provincial bioregions (four out of 10) and primary conservation features (56 out of 155) in Sanctuary Zones or Marine National Park Zones is low ...Against these metrics, and especially in comparison to other networks, the Temperate East CMR Network performs poorly against the Goals and Principles. The major deficiency in representation is coverage on the continental shelf and representation of conservation features in Sanctuary Zones or Marine National Park Zones, most notably the three provincial bioregions that are primarily located on the continental shelf.'

The Expert Scientific Panel recommended:

'the ESP encourages the current and successive governments to address the significant shortfalls in representativeness of the CMR estate as opportunities arise and during future planning cycles, with a priority on amending the outer boundaries of existing CMRs and/or designing new reserves to improve representation in the Temperate East Marine Region and Indian Ocean Territories in particular.'

We submit that these concerns must be addressed through the current Review. We repeat our previous key recommendations for the Temperate East Network here. For more detail on these issues please see our original submission:

- The proportion of the Temperate East Marine Region protected within the proposed network should be increased;
- The objectives should better reflect the need for an ecosystem-based approach to biodiversity conservation and should strive to reduce development pressures in order to protect and restore biodiversity;
- The continental shelf, Lord Howe Island Plateau and Caledonia Basin should be recognised as key ecological features and protected accordingly; and
- *'Strategy E: Develop partnerships with relevant industries to increase understanding of the impacts of anthropogenic disturbance on the region's*

key ecological features and protected species', should strive to go beyond information sharing and understanding. Specifically, it should make provision for translating knowledge into action with a view to reducing anthropogenic disturbance of the region's key ecological features.

In relation to the specific proposals in the *Report of the Bioregional Advisory Panel*, we submit that Parks Australia should:

- Reject the proposed removal of MNPZ protection at Middleton Reef in the Lord Howe Commonwealth Marine Reserve (**CMR**);
- Accept the proposed new MNPZ in the Norfolk Marine CMR and recommend the expansion to include the Norfolk Island Seamounts;
- Accept the proposals of substantial expansions of protection from mining to include the Norfolk, Lord Howe and Gifford Marine Reserves and large parts of the Central Eastern, Jervis and Hunter Marine Reserves; and
- Ensure each marine reserve contains at least one MNPZ, with a particular focus on ensuring that the shelf, continental slope and seamounts are better represented with MNPZ coverage.

North Network

We repeat our previous key recommendations, not addressed by the Review, for the North Network here:

- Establish the following as MNPZs:
 - a) Arnhem Marine Reserve;
 - b) Arafura Marine Reserve; and,
 - c) Joseph Bonaparte Marine Reserve.

In relation to the specific proposals in the *Report of the Bioregional Advisory Panel*, we submit that Parks Australia should:

- Accept the proposed new MNPZ in the West Cape York, Gulf of Carpentaria, Limmen, Wessel and Oceanic Shoals CMRs;
- Reject the proposed removal of MNPZs in the West Cape York, Gulf of Carpentaria and Wessel CMRs; and
- Reject the proposed expansion of trawling and gillnetting within the North marine region's CMRs.

South West Network

In relation to the specific proposals in the *Report of the Bioregional Advisory Panel*, we submit that Parks Australia should:

- Accept the proposed extensions to the MNPZ in the Two Rocks, Bremer, South-west Corner and Perth Canyon CMRs;
- Accept the proposed extensions to protection from mining in the South-west CMRs and seek the expansion of protection from mining for other key coastal communities adjacent to CMRs including at Kangaroo Island (Western

- Kangaroo Island CMR), Esperance (the SW Corner and Eastern Recherche CMRs), Peaceful Bay (SW Corner CMR) and Perth (Perth Canyon CMR);
- Expand the Great Australian Bight CMR's MNPZ westwards to the South Australian border;
 - Ensure that the zoning of the CMRs does not offer less protection for Australian Sea Lions from gillnetting than existing fisheries closures (for example, in the Twilight CMR); and
 - Reject the proposal to open the South-west CMRs to trawling, including the loss of MNPZ protection over the inner-shelf area of the Bremer CMR for scallop dredging.

North West Network

In relation to the specific proposals in the *Report of the Bioregional Advisory Panel*, we submit that Parks Australia should:

- Accept the proposed new MNPZs in the Kimberley, Dampier and Argo-Rowley Terrace CMRs;
- Replace the proposed HPZ for Adele Island with a MNPZ;
- Establishment of a new large MNPZ in the North Kimberley CMR to match the protection proposed by the WA Government in state waters in the adjacent 'Great Kimberley Marine Parks network';
- Increase the protection for the Ningaloo CMR by matching the protection provided in the adjacent WA state waters marine park (which has a network of IUCN II zones) with matching zoning in Commonwealth waters;
- Reject the proposed removal of MNPZs in the Kimberley and Dampier CMRs; and
- Reject the proposed opening up of the Rowley Shoals area to trawling.

Attachments

- *ANEDO Submission on the Coral Sea Commonwealth marine reserve proposal, 27 February 2012 – Attachment 1*



attachment 1 - Coral Sea - ANEDO submiss

- *ANEDO Submission on the Commonwealth marine reserves network proposal and draft Marine Bioregional Plan for the Temperate East Marine Region, 21 February 2012 – Attachment 2*



Attachment 2 - Temperate East - ANI

- *ANEDO Submission on the Commonwealth Marine Reserves Review, 31 March 2015 – Attachment 3*



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