

Australian Network of Environmental Defender's Offices



Australian Network of Environmental
Defender's Offices Inc

Submission to the Marine Reserves Review

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The Australian Network of Environmental Defender's Offices (**ANEDO**) consists of eight independently constituted and managed community environmental law 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

The Australian Network of Environmental Defenders Offices (**ANEDO**) welcomes the opportunity to participate in the Commonwealth Marine Reserves Review.

ANEDO 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 ANEDO previously made comment on two regional reserve proposals and we refer the review panels to the comments made regarding:

- *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***

Thank you for the opportunity for EDO NSW to attend the roundtable with the Temperate East Bioregional Advisory Panel in Sydney in February, and for EDO NT to attend the Darwin roundtable in March.

While it was indicated by the review panels at the roundtables that reserve boundaries would not be subject to further negotiation and the panels are seeking zonation suggestions, we take this opportunity to reiterate the key laws, policies and principles that must underpin any marine reserve planning and management going forward.

This submission addresses:

- 1. International obligations and guidelines**
- 2. Commonwealth legislation and policy**
- 3. ESD and the precautionary principle**
- 4. Climate change and resilience**
- 5. Impacts of mining**
- 6. Specific planning recommendations**
 - a. Coral Sea Network**
 - b. Temperate East Network**
 - c. North Network**

1. International obligations and guidelines

As outlined in our previous submissions and at recent roundtables, Australia's international obligations should be more clearly reflected in the design of the marine reserve network. The Government should therefore seek to more effectively implement the following international legal obligations and policy commitments:

- The *Convention on Biological Diversity (Biodiversity Convention)*, in particular Article 8 (In-situ Conservation);
- The *Programme of work on marine and coastal biodiversity* outlined in the Conference of the Parties (**COP**) 4, decision IV/5 to the *Biodiversity Convention*. The *Programme of work* is in part designed to combat the impacts of climate change on the marine environment.
- The *IUCN Guidelines for Applying Protected Area Management Categories (2008) (IUCN Guidelines)*;
- The *Guidelines for applying the IUCN Protected Area Management Categories to Marine Protected Areas (supplementary to the 2008 Guidelines): Second Draft: June 2011 (Draft IUCN MPA Guidelines)*;

For further detail on the implementation of these obligations, please refer to Attachments 1 and 2.

2. Commonwealth legislation and policy

Many of these international obligations are expressed in the relevant federal legislation – the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*; and the *EPBC Regulations* (in particular Schedule 8: *Australian IUCN reserve management principles*).

As stated at the Sydney roundtable, any management plans made for the marine reserves network must reflect and implement the objects of the EPBC Act. We draw the Review Panel and the Bioregional Advisory Panels' attention to the following objectives of the EPBC Act:

- (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
- (ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

Importantly, the objects of the EPBC Act incorporate the need to consider social and economic impacts through the need to “promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources”. In our view, the current network of proposed marine reserves already takes these issues into account through the placement of marine protected areas and the types of zones applied, and the range of activities permitted in the majority of zones. In fact, what is missing is a focus on the protection of marine ecosystems more generally. The Review Panel should therefore be focussed on identifying how an ecosystem-based approach to marine protection can be strengthened through the Review process, consistent with the objects of the Act to protect the environment.

We also draw the Review Panel's attention to our previous comments that plans need to be amended to enhance the role of indigenous people in marine reserves planning and management, consistent with EPBC Act objects (see Attachments).

Furthermore, the marine reserve network should more comprehensively address relevant federal policy, such as the *Guidelines for Establishing the National Representative System of Marine Protected Areas 1998 (NRSMPA Guidelines)*. The marine reserve network should further the 'actions' specified in the *Australian Biodiversity Conservation Strategy 2010-30 (Biodiversity Strategy)*. As the purpose of the *Biodiversity Strategy* is to provide the 'guiding framework for conserving our nation's biodiversity over the coming decades',¹ we submit that the marine reserve network should seek to integrate and advance its 'Priorities for action' accordingly.

¹ See Natural Resource Management Ministerial Council 2010, Australia's Biodiversity Conservation Strategy 2010-30, *Australian Government, Department of Sustainability, Environment, Water, Population and Communities*, page 7.

3. ESD and the precautionary principle

The EPBC Act requires the implementation of principles of ecologically sustainable development which are defined as follows:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- (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 biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- (e) improved valuation, pricing and incentive mechanisms should be promoted.*

Importantly, the principles require the application of the precautionary principle, namely that “if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.

As acknowledged at the Sydney roundtable and in relevant literature, the marine environment likely contains as yet unknown biodiversity, and so the application of a precautionary approach is warranted. A lack of information on some marine species must not be used as a reason for not taking a comprehensive ecosystem approach to conserving and managing the marine environment more comprehensively.

In this context ANEDO submits that the precautionary principle requires application of a network of Comprehensive, Adequate and Representative (**CAR**) marine reserves as described in the NRSMPA Guidelines. In practice, this means that there should be a CAR network of all habitats in Marine National Park Zones. The current proposed zoning falls short of this requirement and the network of Marine National Park Zones should be expanded to reflect a CAR network of marine environments.

4. Climate change and resilience

Importantly, the EPBC Act requires that “decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations”. This means that the marine reserve network must consider the future impacts of climate change (including protection from anthropogenic stressors in order to maintain resilience) and be designed to facilitate adaption as required.

For further detail on the impacts of climate change on the marine reserves network, see Attachments 1 and 2.

As noted at the Sydney roundtable, zoning and connectivity should be considered in light of building resilience to climate change impacts, and to other stressors that are likely to hinder species’ adaptation to climate impacts.

In designing such a network 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.

5. Impacts of mining

In addition to the recommendations for strengthening zoning made throughout this submission, we note that a significant concern with the current zoning of requirements is that none of the zonings protect areas from mining operations. This is a significant failure of the zoning process, particularly in light of the recent growth of offshore and deep sea mining proposals and activities. It is vital for the future protection of the marine environment that more areas are protected from mining activities. Clear protection zones that expressly exclude mining are needed. This was raised at the Darwin roundtable and is noted below.

6. Specific planning recommendations

a. 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:

1. All reefs, shoals and cays must be included in the proposed Marine National Park Zone.
2. Habitat crucial to the continued survival of shark species and Nautilus must be included within the Marine National Park Zone.
3. All seamounts must be included in the Marine National Park Zone.
4. Commercial fishing practices must demonstrate that they can be conducted in a sustainable manner.
5. An assessment regarding the impacts of shipping vessels on the Marine National Park Zone should be undertaken. The results should guide management of vessels in the Marine Reserve.
6. Hand collection should be managed in accordance with the precautionary principle.
7. Areas of high ecological significance must be protected from all forms of fishing.

b. Temperate East Network

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

1. The proportion of the Temperate East Marine Region protected within the proposed network should be increased. There is considerable evidence to suggest that the best environmental outcomes are achieved when proportionally large areas are afforded a high level of protection.
2. Objects of the EPBC Act pertaining to indigenous Australians should be better reflected in the Plan's objectives.
3. The objectives should better reflect the need for an ecosystem-based approach to biodiversity conservation and the Plan should strive to *reduce* development pressures in order to protect and restore biodiversity.
4. The continental shelf, Lord Howe Island Plateau and Caledonia Basin should be recognised as key ecological features and protected accordingly.
5. '*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.

c. North Network

1. ANEDO notes the great importance of the North Network, which has (among other things):
 - Established the first protection of the marine areas in the Gulf of Carpentaria, West Cape York and the Torres Strait. These reserves provide critical protection (importantly the highest level of protection) for nesting habitats for flatback turtles and hawksbill turtles. We note that hawksbill turtles are listed as a vulnerable species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
 - Established the first protection for major places of marine life importance in the Gulf of Carpentaria and north of Maningrida in Arnhem Land.
 - Increased the level of Marine National Park Zones in the north from 0% to 3%.
 - Provided some, though not nearly sufficient, protection from oil, gas and seabed mining: The network (as it currently stands) will protect 3% of the North Marine Region from oil, gas and other mining activities including parts of West Cape York, the Torres Strait, the Gulf of Carpentaria and parts of the waters around the Wellesley and Wessel Islands.

2. ANEDO strongly urges that Marine National Park Zones be established in the:
 - Limmen Marine Reserve (ANEDO particularly notes that small geographic area of this reserve should not belie its significance as a marine hotspot, particularly as a breeding ground for dugong.)
 - Arnhem Marine Reserve
 - Arafura Marine Reserve (ANEDO notes the importance of protection of this area which sits adjacent to the Coburg Peninsula World Heritage Area.)
 - Oceanic Shoals Marine Reserve
 - Joseph Bonaparte Marine Reserve

3. *Oil, Gas and Mining*: The marine national park zoning in the North Marine Reserve Network has no impact on the current entitlements for Oil and Gas industry as there are no current exploration leases in these areas. Given the lack of scientific knowledge and potential for impact from many new mining technologies, significantly more areas should be protected. ANEDO would support the use of zoning which prevents oil, gas and mining over much larger areas within the Marine Reserves. ANEDO supports the idea raised at the roundtable, namely, that the zoning plan for the North Marine Reserve Network would be substantially improved by

prohibiting mining from operating in those parts of the Marine Reserves that are currently outside exploration leases. This would increase the area protected from mining and exploration from 3% to 18% of the North Marine Region. ANEDO raises with the review the often forgotten Montara Oil Spill disaster in the Timor Sea. With so many marine areas of national and international significance in the Northern Region, serious consideration must be given to oil and gas 'no-go-zones'.

4. *Indigenous engagement:* The objects of the EPBC Act pertaining to indigenous Australians should be better reflected in the Plan's objectives. ANEDO also notes the particular opportunities for indigenous employment in the management of Marine Reserves.
5. *Compliance and enforcement:* As with the other networks, the effectiveness of proposed zoning will be highly dependent on whether sufficient resources and staff are allocated to undertake monitoring, compliance and enforcement activities.

Attachment 1

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

Attachment 2

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