Submission to Review of Marine Reserves

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NATIONAL ENVIRONMENTAL LAW ASSOCIATION

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1. INTRODUCTION – ABOUT NELA

The National Environmental Law Association (NELA) is Australia's leading environmental law organisation with a membership base of professionals in environment and resources law and related disciplines.

NELA's vision is that ecological sustainability is a guiding principle in regulating energy and resources, utilities, pollution control, protecting biodiversity and cultural values, and land use planning and infrastructure.

We seek to protect the environment by shaping the law through information sharing, analysis and debate. One of our three policy priorities is the protection of Australia's marine and coastal environment.

2. ABOUT THIS SUBMISSION

The National Environmental Law Association (NELA) welcomes the opportunity to provide a submission to the review of marine reserves.

We note that the terms of reference for the Expert Scientific Panel established to review the science underpinning the Commonwealth marine reserves including proposed zoning boundaries and allowed uses require it to advise on:

1. options for zoning, and zoning boundaries, and allowed uses consistent with the Goals and Principles
2. future priorities for scientific research and monitoring relating to marine biodiversity within the marine reserves, especially any relating to the understanding of threats to marine biodiversity within the marine reserves.
3. options for addressing, the most significant information gaps hindering robust, evidence-based decision-making for the management of the marine reserves.

In summary

- NELA supports the establishment of a national set of representative marine protected areas that will provide reference areas for future generations, as well as safeguard areas from impacts by minimizing environmental damage. The design principles should be followed.
- In the case of displaced activities, such as fishing, it may be appropriate

to phase out activities over a period of time, to allow alternative livelihoods to be developed, and to reduce the burden of compensation.

- Common boundaries with state protected areas may provide additional benefits and reduce regulatory and monitoring costs.
- Pervasive threats such as climate change (ocean warming), ocean acidification, and atmospheric pollution may not be prevented by protected area declaration, but scientific studies are now showing that existing protected areas recover faster from impacts such as crown of thorns outbreaks, and also have resilience against invasive species. As such, failure of protection against all climate change impacts is not a rationale for protected area establishment.
- The design and implementation of the network should minimise other stressors in order to promote system resilience.

3. ToR 1: Options for zoning, and zoning boundaries, and allowed uses consistent with the Goals and Principles

The Australian marine reserve estate is required to comport with international and national laws and principles, including the Convention on Biological Diversity (especially Article 8, *in situ* conservation) and the Programme of Work on marine and coastal biodiversity, aimed at addressing the impacts of climate change on the marine environment, prepared by the COP4 Decision IV/5 to the Biodiversity Convention. It is also guided by the objects of the *Environment Protection and Biodiversity Conservation Act* 1999 (Cwth) and the EPBC Regulations, schedule 8 of which sets out the Australian IUCN reserve management principles.

Despite these over-arching legal and policy mandates, the zoning specified for many of the reserve areas falls short of offering adequate protection. For example, while the Coral Sea Marine National Park covers 100% of the region, and over 50% is designated as a "no-take" zone, only a small fraction of the Coral Sea's most biologically valuable areas – the reefs, shoals, sea mounts and cays – enjoy "no take" protection. While commercial fishing may not be the major threat to such areas, removing this stressor is likely to enhance the overall resilience of such areas to other threats, such as climate change.

Zoning and new information

The EPBC Act requires that "decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations". In the context of marine reserves, the impacts of future climate change are a major feature of such decision-making. The design and implementation of the network should minimise other stressors in order to promote system resilience.

The Goals and Principles note that to accommodate climate change as far as practicable, design principles and zoning that promote resilience and adaptation will be incorporated. In particular, accommodating latitudinal or longitudinal movement in ecosystem or species distributions and changes in oceanographic features and currents, anticipated in response to climate change. NELA submits

that this could include orientation of boundaries in the direction that isotherms are moving (e.g. poleward on the east and west coasts. Specifically, long thin areas should be orientated north-south, not east-west, which may allow movements of species and habitats to remain within the area boundaries as long as possible.

A key feature of any revision to current MPA arrangements must be mechanisms by which zoning can be modified to accommodate new information. For example, new fishing gears may be developed that have minimum impact on protected area values (e.g. benthic habitat features) and so may be permitted in some areas where they were initially prohibited. Likewise, new information on threatening processes may require their removal/discontinuation from some zones where they are previously allowed.

A key aspect of the current arrangements that requires reconsideration is the absence of controls against mining. At present no zoning requirements prohibit mining. Given the growth of offshore and deep sea mining proposals, it seems appropriate that mining excluded from zones requiring the highest levels of protection.

Changes to MPA boundaries or permitted uses should observe the environmental law principle of non-regression and be accompanied by a clear articulation of goals for particular zones within each protected area boundary (e.g. corresponding to IUCN protection categories) including locations that can act as reference areas for the assessment of impacts on marine systems from a range of anthropogenic impacts. NELA supports the use of the full range of IUCN categories, provided that sufficient areas for the highest category of protected area are established. If one activity is to be privileged for any reason (e.g. oil and gas exploration, fishing activities) in the design and implementation, that privilege should be explicit and acknowledged during the process.

4. ToR 2: Future priorities for scientific research and monitoring relating to marine biodiversity within the marine reserves, especially any relating to the understanding of threats to marine biodiversity within the marine reserves.

Scientific research and monitoring should be permitted within all zones, provided it does not compromise the values of the reserve area. Destructive sampling at small scales (e.g. fish, plankton, habitat sampling) should be permitted. The burden of proof should be on the proponent of any activity. Monitoring and reporting of such research should be publically available for scrutiny, just as for any other activity.

5. ToR 3: Options for addressing the most significant information gaps hindering robust, evidence-based decision-making for the management of the marine reserves.

In addition to full implementation of the MPA network, NELA recommends the wider implementation of a National Oceans Policy along the lines of the Policy introduced by the then-Environment Minister, Hon Robert Hill AC in 1998. Australia's Oceans Policy was widely recognised as setting an international

benchmark in taking an integrated approach and a long-term view to maintain the health of Australia's oceans. The policy had ten objectives relating to the relating to identifying and prioritizing economic opportunities, understanding ecosystem status and identifying threats, identifying stakeholder interests, measures for achieving conservation objectives including the establishing of MPAs, and resolving conflicts between competing marine uses (Oceans Policy 1998, 13).

The policy aimed for the states, the Northern Territory and the Australian Government to prepare joint ecosystem-based Regional Marine Plans that would apply across state and Commonwealth waters. The plans were also to apply to all the sectors with an interest in marine resources - fisheries, oil and gas, tourism, shipping and conservation. The Australian Government has achieved a great deal in recent years with the development of Commonwealth marine bioregional plans and the new network of Commonwealth marine reserves, which were also committed to as part of Australia's Oceans Policy. Effective implementation of a nation-wide marine spatial planning framework requires additional information about environmental conditions, stressors and threats, and the appropriate mix of planning tool and strategies.

FURTHER INFORMATION

For any inquiries about matters raised in the submission please contact Jan McDonald, President, NELA on 0418 320196 or c/o secretariat@nela.org.au