



A Community Legal Centre specialising
in public interest environmental law

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Mr Guy Dickson
Secretary to the Select Committee on Marine Parks in South Australia
C/- Parliament House
GPO Box 572
ADELAIDE SA 5001

By email at guy.dickson@parliament.sa.gov.au

LEGISLATIVE COUNCIL INQUIRY INTO MARINE PARKS IN SOUTH AUSTRALIA

The Environmental Defenders Office (SA) Inc (EDO) is a community legal centre with over 15 years' experience specialising in public interest environmental and planning law and we welcome the opportunity to make a submission to this Inquiry.

Marine Parks Act

Under the Marine Parks Act, the South Australian government has obligations to ensure that marine biodiversity and habitats are protected by appropriate marine park areas and zoning. These obligations stem from national and international obligations set out below.

The objects of the Marine Parks Act¹ make it clear that South Australian marine biodiversity and habitats must be protected in accordance with the "CAR" reserve system of management, that is, marine parks and the habitats within them must be:

- Comprehensive which means that "*examples of all of the habitats that occur [in the State] need to be included within marine parks*"²;
- Adequate, which "*is achieved if the marine park provides for both ecosystem integrity and the viability of whole populations of species*"³;
- Representative, that is, "*all habitats in a region (eg reefs, beaches, seagrass, mangroves) need to be included across the full variety of physical situations in which they occur (eg shallow and deep water reefs, low and high energy*

¹ Section 8

² Government of South Australia "Marine Park 1 Far West Coast Marine Park"

³ *ibid*

beaches). *This variety must be represented within a combination of parks created in a bioregion.*⁴

The objects in the Act provide as follows:

“The objects of this Act are:

- (a) to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks; and*
- (b) to assist in—*
 - (i) the maintenance of ecological processes in the marine environment; and*
 - (ii) the adaptation to the impacts of climate change in the marine environment; and*
 - (iii) protecting and conserving features of natural or cultural heritage significance; and*
 - (iv) allowing ecologically sustainable development and use of marine environments; and*
 - (v) providing opportunities for public appreciation, education, understanding and enjoyment of marine environments.*⁵

The principles of ecologically sustainable development (ESD) are also set out in the Act⁶. To achieve ESD, the Act provides that the following principles need to be taken into account:

- “(a) decision-making processes should effectively integrate both long term and short term economic, environmental, social and equity considerations;*
- (b) if there are threats of serious or irreversible harm to the marine environment, lack of full scientific certainty should not be used as a reason for postponing measures to prevent harm;*
- (c) decision-making processes should be guided by the need to evaluate carefully the risks of any situation or proposal that may adversely affect the marine environment and to avoid, wherever practicable, causing any serious or irreversible harm to the marine environment;*

⁴ *ibid*

⁵ Section 8

⁶ Section 8(2) and (3)

- (d) the present generation should ensure that the health, diversity and productivity of the marine environment is maintained or enhanced for the benefit of future generations;
- (e) a fundamental consideration should be the conservation of biological diversity and ecological integrity;
- (f) environmental factors should be taken into account when valuing or assessing assets or services, costs associated with protecting or restoring the marine environment should be allocated or shared equitably and in a manner that encourages the responsible use of the marine environment, and people who obtain benefits from the marine environment, or who adversely affect or consume natural resources, should bear an appropriate share of the costs that flow from their activities;
- (g) if the management of the marine environment requires the taking of remedial action, the first step should, insofar as is reasonably practicable and appropriate, be to encourage those responsible to take such action before resorting to more formal processes and procedures....” (emphasis added).

The objects of the Act and the principles of ESD are enshrined within the obligations set out in the Act. In particular, section 9 of the Act provides that the Minister, or any other body involved in the administration of the Act, is required to act consistently with the objects of the Act, and to seek to further those objects. Similarly, marine park management plans and the zoning established by them must also be consistent with those objects⁷.

In short, the Act aims to preserve some of the marine environment and its biodiversity for future generations. Without such preservation, there is a real risk that little marine life will be left for the future.

National and International Agreements

The State Government's obligations as set out in the Marine Parks Act derive from its national and international obligations supported which are as follows:

- In 1990, at the 18th Session of the General Session of the IUCN, the Australian Government committed itself to expand the nation's marine reserve system;
- In 1992, the South Australian Government signed the *Intergovernmental Agreement on the Environment*, and in doing so committed to itself to a role in establishing the National Representative System of Marine Protected Areas;
- In 1993, Australia ratified the *UN Convention on Biological Diversity*, further committing itself to the protection of marine biodiversity and ecological integrity and the sustainable use of marine resources;

⁷ Section 13

- In 2002, at the UN World Summit on Sustainable Development, global leaders (including the Australian Government) committed to establishing representative networks of Marine Protected Areas worldwide by 2012.⁸

In these circumstances, the State Government is obliged to establish sufficient sanctuary zones within the State's waters. To do less would be contrary to the law and deprives future generations of their entitlement to marine biodiversity.

Science

National and international science now indicates that a CAR reserve system requires significant no-take or sanctuary zones to operate effectively. For example, the 2003 International Union for the Conservation of Nature World Parks Congress (which has been endorsed by Australian scientists⁹) recommended that sanctuary zones need to provide protection for 20-30% of all marine habitat types as a minimum benchmark.¹⁰ Given this, the State Government's current proposal to provide sanctuary zones in about 10% of the State's waters is deficient.

Evidence that the South Australian marine environment could be both enhanced and restored by the operation of marine parks, and particularly by the use of sanctuary zones, is conclusive. In 2001, the *Scientific Consensus Statement on Marine Reserves and Marine Protected Areas* was published by the American Association for the Advancement of Science and was signed by 160 academics from around the world who are expert in the field. They stated that networks of marine reserves will be necessary for long-term fishery and conservation benefits.

Recent research more specifically indicates that where sanctuary zones are established:

- the mass of marine plants and animals increases by 446% on average;
- the number of plants and animals increases by 166% on average;
- the body size of plants and animals increases by 28% on average; and
- the number of species increases by 21% on average.¹¹

⁸ *Plan of Implementation*, Chapter IV, Paragraph 32.c;
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf Last accessed 27 July 2011.

⁹ "Scientific Principles for Design of Marine Protected Areas in Australia: A Guidance Statement", The Ecology Centre, The University of Queensland 2009

¹⁰ IUCN, *World Parks Congress V- Recommendations* (2003);
http://www.iucn.org/about/work/programmes/pa/pa_event/wcpa_wpc/ at 191. Last accessed 27 July 2011.

¹¹ Partnership for Interdisciplinary Studies of Coastal Oceans (2007) *The Science of Marine Reserves*, 2nd Edition, International Version, 4.

Given this, there are obvious flow-on advantages to species which exist outside any sanctuary zone. Clearly, such outcomes are to the distinct benefit of all stakeholders, every one of whom is seeking to increase and improve marine life. Given this and given the State Government's obligations at a State and Federal level, significant sanctuary zones are needed to provide protection for all marine habitat types.¹²

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¹² IUCN, *World Parks Congress V- Recommendations* (2003); http://www.iucn.org/about/work/programmes/pa/pa_event/wcpa_wpc/ at 191. Last accessed 27 July 2011.