



# NATIONAL SEAFOOD INDUSTRY ALLIANCE

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## TEMPERATE EAST, CORAL SEA, NORTH, NORTH-WEST AND SOUTH-WEST MARINE REGIONS

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### SUBMISSION ON THE

*Draft Commonwealth Marine Reserves Network Management Plan 2013 (for each region)*

14 February 2013

### MEMBERS OF NATIONAL SEAFOOD INDUSTRY ALLIANCE



## About this submission

This National Seafood Industry Alliance (NSIA) submission responds to the release by Government of the draft Management Plans for the Temperate East, Coral Sea, North, North-West and South-West Commonwealth Marine Reserves Networks, found at:

<http://www.environment.gov.au/marinereserves/consultation/index.html>.

NSIA considers that due to the timing and timeframes provided for this consultation and the fact that so much concern and uncertainty remains about the Fisheries Adjustment Assistance Package (FAAP), it has not been possible for industry to adequately and fully engage in the management planning development process.

Given the, in our view, inadequate response to the FAAP issues raised by industry, including by the announcement of the scope and elements of the (FAAP), NSIA members concluded that it was not in the interest of members or industry to continue discussions on the development of the FAAP, which it considers fundamentally flawed. NSIA reiterates its position that:

*“Any Australian negatively impacted should receive fair and reasonable adjustment assistance.”*

Given the above, this submission does not constitute a comprehensive response to all of the issues, concerns and aspects of marine reserve network management in relation to commercial fishing and aquaculture. Additional regional issues will arise as SEWPAC undertakes further consultation and engagement on management, research, monitoring and other aspects of reserve management, including during development of regionally specific management arrangements. A resounding message from industry reference group participants and the wider industry and aquaculture sectors, in preparing this submission, was that the current management planning timeframes are unacceptable to consider such a significant matter in appropriate detail.

Further, NSIA submits that by rushing these Management Plans through, Government is working contrary to a number of commitments, agreements and policies. For example, contrary to the adjustment policy, which says “restrictions on fishing activities from the declaration, zoning or management of MPAs will be identified and accounted for before MPA declaration or re-zoning”, the Management Plans are being implemented prior to any detailed discussion about management arrangements and impacts. The impacts certainly will not have been “accounted for” prior to the Plans coming into effect as proposed in July 2014.

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## 1. EXECUTIVE SUMMARY

The National Seafood Industry Alliance has made its position on the new Commonwealth Marine Reserves Networks (CMRN) clear: although we acknowledge that the Government is committed to the broader public good of marine biodiversity conservation through its Marine Bioregional Planning process, the fishing and aquaculture industry does not support the marine reserve networks in their current form.

We consider they place an unjust burden on the commercial fishing industry, with no proper calculation of the impacts, including as a result of reserve management. Further, the consultation and timelines for development of management plans have been grossly inadequate, causing significant stress and uncertainty within the fishing and aquaculture industry, supporting businesses and communities. This has made consultation and engagement of the industry on management plans and arrangements very challenging. It is difficult to consider management of reserves when the industry feels that impacts have not been adequately addressed, and timelines for finalisation of management plans so truncated as to stifle effective engagement.

Notwithstanding, the proclamation of the CMRNs in November 2012, and current statutory consultation period, requires us to remain vigilant during development of management plans for the reserves, and engage as effectively as possible.

The Government must minimise the regulatory burden it imposes through new regulatory imposts. Such an approach is in keeping with the December 2012 Council of Australian Governments (COAG) *National Compact on Regulatory and Competition Reform*, which commits governments to ‘free[ing] the business environment from unnecessary regulation’ (p. 2)<sup>1</sup>. In an assessment of governments’ performance, the Minister for Small Business told COAG that:

*Small businesses are frustrated and overwhelmed with the regulatory burden impacting their business operating environment [...] the cumulative effect of a myriad of regulations*

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<sup>1</sup> <http://www.coag.gov.au/sites/default/files/Signed%20Compact.pdf>

*and compliance requirements (p. 1)*<sup>2</sup>.

We strongly support this Minister's assessment and submit that as proposed, the regulatory burden on the fishing and aquaculture industry will be significantly increased.

The ongoing viability of many fishing and aquaculture businesses depends on good, cost-effective management of the new marine reserves, and respect for the ongoing rights and accumulated knowledge of commercial fishers. It has been proven in the South-east process that effective industry engagement has streamlined interim management arrangements, resulted in cost-savings and generally ensured industry buy-on and stewardship.

Noting that the industry does not support the proposed reserves for the reasons outlined in previous submissions and representations, this submission suggests improvements and additions that would produce a better management result for commercial fishers, without detracting from the conservation objectives of the Plan. Our goal is to produce a clear, efficient and cost-effective management regime.

Key issues:

- The draft Plan is very high level, leaving management impacts and review processes unknown and increasing legal and policy uncertainty for industry, due to those details needing to be worked out after Plans are declared in July 2013.
- Unacceptable lack of governance and processes, in the Plan, for decision making including on new/reviewing fishing methods. The Director's powers to change fishing management arrangements and/or add or amend conditions to Class Approvals appears contrary to previous discussions and commitments, which was to ensure as high a level of certainty to industry as possible over the 10 year management plan cycle.
- There is a need to allow the option for permits to be issued by the Director, if required
- Decisions about what gears, methods, sectors and activities are "compatible" and "prohibited", as reflected in the draft Plan, have not been based on a transparent or equally applied risk assessment. In many cases, the outcomes are inconsistent, either across regions and/or with reserve management objectives
- A robust Fishing Gear Risk Assessment framework is necessary. NSIA has written separately on the SEWPAC draft proposed framework, which requires further industry engagement with SEWPAC. In any case, the assessment framework must, at a minimum, be referred to in the Plan

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<sup>2</sup><http://www.coag.gov.au/sites/default/files/Report%20from%20the%20Minister%20for%20Small%20Business%20-%20Attachment%20A%20-%202017%20December%202012%20version.pdf>

- The fact that the Director *may* approve oil and gas pipelines and other infrastructure in green zones (National Park – “Intended to provide a high level of protection for the ecosystems, habitats and biodiversity within the area”) appears inconsistent with the alleged science and objectives of the Plans, which is to protect and conserve biodiversity. In the same way there is scope provided for these activities, we would ask that opportunity is provided to the fishing industry with new methods, gear which may not impact negatively on the science and objectives of the specific plan.
- It is clear that Government appears committed to these high level style plans. This being the case, industry and other stakeholders deserve and expect the following:
  - Clear enunciation of how Government intends to finalise the Class Approval document including articulation of all legal and policy implications and what role, and at what stages, industry will be involved in finalising the Class Approvals?
  - How industry will be involved in developing and finalising a risk assessment framework?
  - Given Class Approvals, as proposed, will list “compatible” fishing methods, what process will be undertaken in the necessary task of defining each method, for the purposes of the risk assessment framework
  - What process Government intends to use for assessment of economic and social impacts, should allowed fishing gears/methods be changed (e.g. a decision is made to exclude a previously allowed method) during the life of the Plan?
- CMR boundary information availability – ideally should be available electronically so industry can download into plotters and onto charts.
- Limited detail on a range of critical reserve management issues, including those outlined in “Key principles” in this submission.

Further, in developing the draft Plan:

- Objectives for the marine reserves network should be expanded to include recognition of the need to have effective stakeholder engagement
- Sufficient detail should be articulated in the Plan, particularly relating to a research, monitoring, review and evaluation system, to enable tracking of how the plan is meeting its objectives
- The proposed concept of a class approval for commercial fishers is in-principle supported by industry, introducing much-needed administrative and operational efficiency. However, there is still a need for greater certainty about status and the development of Class Approval, including legal and policy implications, including such issues as dealing with sensitive information, prior to management being finalised. MOUs or similar must be developed in consultation with the fishing industry to ensure confidentiality and transparency in the sharing of fishery information such as VMS and logbook data, as well as

to confirm that all costs associated with these activities are rightfully funded from Government sources.

- As stated above, the Plan should allow for explicit review and assessment of fishing methods and activities, including new gears and/or new information, based on a clear, transparent process and sound science. This would not impinge on the existing rights under the EPBC Act for the Director of National Parks to review and exclude activities based on appropriate processes, but would complement that opportunity.
- Ongoing formal consultative structures, especially to allow users to be engaged in the management and review of success against objectives of the reserves network, is critical
- Government must commit to ensuring all aspects of management, compliance and monitoring (including research) of the Marine Reserves Networks should be adequately funded and not be incorporated into fisheries management levies, given Marine Reserves establishment involves the reallocation of marine resources from a private benefit to a broader public good
- Scope for a formal and measurable marine research strategy is necessary
- An agreed and regular reporting framework, through consultative structures, to ensure monitoring and review, and reporting on progress, is a fundamental requirement. This is required of the fishing and aquaculture industry, under other sections of the *EPBC Act* (for example, through Strategic Assessment and/or WTO reporting requirements). There is no reason that Marine Reserves network should not also be required to meet an annual review and reporting process.

Given the truncated timelines provided for comment and largely generic nature of the proposed Management Plan, industry seeks assurance from Government of ongoing engagement to ensure that all relevant management issues are identified and addressed prior to the finalisation of the Plan.

## 2. DRAFT MANAGEMENT PLAN COMMENTS

The fishing and aquaculture industry has mixed views on the construct and intent of the draft Commonwealth Marine Reserve Network Management Plan (CMRNMP, or “the Plan”). That is, it appears to be written in such a way as to allow a degree of flexibility, and provides for key areas such as research, review and monitoring to be developed further during the life of the Plan. As previously advised in NSIA submissions, the fishing and aquaculture industry generally support the proposed construct of Class Approval, which helps to ensure administrative efficiency, whilst ensuring effective management (noting, as detailed below, there are outstanding issues in relation to legal and policy implications that are yet to be resolved).

That said, and as outlined in this submission, we believe the current draft Plan to be underdeveloped in a number of key areas, which creates unacceptable uncertainty for fishing operations, and about the ability of Government to meet its obligations and commitments to effectively manage, review and resource the CMRN. Some areas also require amendment or clarification to allow appropriate levels of business certainty and operational realities to be taken into account.

The fishing industry has always encouraged Government to ensure users are engaged in management of CMRNs, including development of management arrangements, compliance, monitoring, education and research. These provisions are reflected in the draft Plan, with improvements suggested below.

The following section systematically works through the draft Plan section by section, and reinforces and expands on the issues raised above, suggests amendments, and/or generally comments on various aspects of the draft document.

### A) Part 1 - Introduction

Part 1, Para 5. Talks about the reserves being one “tool”. The Marine Bioregional Plan should be referenced in this section. This was a huge body of work and puts the reserves in context – they are a component of Marine Bioregional Planning (MBP). In addition, the section in this paragraph on mitigating pressures should include the pressure of oil and gas activity, if commercial fishing is going to remain listed as a pressure.

Part 1, Para 8. (Coral Sea, N/A) The last sentence is not consistent with the fact that conservation values are often unique to an individual reserve. Therefore, it may not always be appropriate to have consistent rules across all reserves within the network (as identified and acknowledged in the draft “Proposed framework for the assessment of fishing methods in Commonwealth Marine

Reserves” (or “Proposed assessment framework”)). The wording of the last sentence in Para 8 “...establishes consistent management arrangements across all reserves within the network” must be amended to reflect this.

Section 1.1, Para1. Remove “which require active management and monitoring over time to ensure the objectives of this management plan are achieved”.

Section 1.2. Objectives – see the “Objectives” section of this submission below.

## **B) Part 2 - Description of the Environment, Values and Pressures in the Marine Reserves Network**

Section 2.1. Appropriate here to again make reference to the Marine Bioregional Plan (MBP) and that further information is available in that document. This comment is only relevant to Coral Sea and South-West draft Plans, given MBPs are referred to in the other draft Plans.

Section 2.4. This section could more adequately address the range of pressures expected to be present in the region and reserve network, although we note it appropriately refers to the Marine Bioregional Plan for further details.

Another key omission of this section is that of monitoring and assessing the effectiveness of data collection, research and management on the conservation values of the network, based on the pressures identified. The draft plan does not articulate indicators that can be used to measure the success of the network in protecting the conservation, resource use, cultural or heritage values. This is covered in the “Review” section below and is further discussed under Strategy 7 below.

## **C) Part 3 – IUCN Categories and Zoning of Network Reserves**

We note zoning in the CMRN is based on International Union for the Conservation of Nature (IUCN) guidelines and Australian Marine Reserve management principles. We have previously questioned the details of IUCN Category VI “Recreational Use” and some “Special Purpose” zones in the new marine reserves, given our concerns about inequities in the treatment of commercial fishing compared to recreational fishing or other activities in some zones. In particular, we continue to question the scientific integrity of multiple use zoning that allows all forms of mining and oil and gas activity, but not trawl or other forms of demersal fishing, which in many cases are proven to be low impact. We reiterate that these zoning inconsistencies should ideally be reviewed *before* zones are embedded in a ten-year management plan.

In any case, our recommendations below, to amend the detail of the Plan in relation to “prohibited methods” (and the associated relationship with the Class Approval and Proposed Assessment Framework), will address these concerns.

Also note comments on Sections 5.2 and 5.5 of the draft Plan, and Part E under “Key principles for industry”, of this submission.

## **Region specific zoning issues**

It must be noted here that these comments are by no means comprehensive. The views of the fishing industry in relation to each region and the CMR proposals has been made very clear, through over-arching, and region specific submissions throughout the process. Nothing in this section detracts from or reduces the importance of the comments and recommendations previously made. The following comments have been provided by individuals or associations in the context of the proposed draft Plans:

### ***Temperate east***

A number of Auto longline (ALL) operators have again raised the issue of discrepancies in allowed methods within the same zones, but between CMRNs. For example, it remains unclear why ALL is permitted in the SE multiple use zone, but not in the Temperate East, Coral Sea or South-west?

Specifically for the Temperate East, ALL operators have also raised with NSIA the fact the Special Purpose Zone, apparently changed from multiple use to reduce impacts on operators, is actually outside the area of the ALL fishery, so does not reduce socio-economic impacts.

Additionally, potentially significant impacts on the developing Alfonsino trawl fishery could also be resolved by consideration of zoning changes.

### ***North***

Due to residual socio-economic impacts on the industry, we understand that the Northern Prawn Fishery industry has written separately recommending that a change to the zoning in the Gulf of Carpentaria MRN be made to allow for trawling to take place in that reserve. Please refer to their submission for further details.

### ***North-west***

Boundaries of 80 Mile Beach Marine Reserve will fully encompass the last sustainable wildstock pearl oyster fishery in the world. Further, pearling activities in the North-west were approved in the fisheries gear risk assessment and at no point during any period since has any pearling related activity been raised by SEWPaC as having unacceptable impacts. ABARES estimated there will be

'zero impacts' to pearling based on all of the consultation documents, indicating that all pearling activities will be authorized in the relevant zones.

### **South-west**

Naming of zones around Kangaroo Island as Special Purpose zones, with different methods allowed when compared to another Special Purpose zone in the immediately adjacent and existing Murray CMR, presents a potential compliance and education issue. To reduce confusion, our proposed solution is to rename the new zoning (Special purpose zone) in the proposed SW region to something different.

## **D) Part 4 - Management Strategies**

### **Strategy 1 – Improve knowledge and understanding of the conservation values of the marine reserves network and of the pressures on those values**

More information is required, to be described in the Plans, on commitment to funding and resources for undertaking the Actions and achieving the stated Outcomes of Strategy 1.

Actions - We also suggest that the draft Actions are inadequate and inappropriate, in that there appears to be a focus on research institutions and industry providing the time, resources and/or funding to meet the objectives, when the government has already established a research facility to inform decision-making on the marine environment, including bioregional plans and reserves network. We note the following already have a mandated role (and significant funding):

- National Environment Research Program
- Marine Biodiversity Hub

*provides scientific information and advice to support decision making in the marine environment, specifically in implementing and monitoring marine bioregional plans, developing the National Representative System of Marine Protected Areas, and supporting the information needs of the Department of Sustainability, Environment, Water, Population and Communities in providing key baseline information.*

4 themes of the Marine Hub include:

1. National monitoring, evaluation and reporting
  2. Supporting management of marine biodiversity
  3. National ecosystems knowledge
  4. Regional biodiversity discovery to support marine bioregional plans
- Environmental Decisions Hub

- Australian Institute Marine Science
- IMOS

We suggest it would be appropriate for the action to relate to how it is proposed these facilities (and similar) will be used to support decision-making in the reserves network.

Generally, it is not appropriate for industry to fund research and monitoring for Commonwealth marine reserves, given their acknowledged broader public good nature. We note that publicly funded fisheries management related research (routinely undertaken) would be available for consideration. And, of course, there are a range of stakeholders involved in using the reserves and who also have a role in supporting research needs, as acknowledged.

The Actions should be carefully re-considered and expanded, including against the IUCN management principles. This includes a wider range of issues not limited to understanding the marine environment but also the social and economic impacts of management decisions eg noting particularly reserve management principles such as:

*2 Effective and adaptive management...Management arrangements should be effective and appropriate to the biodiversity objectives and the socio-economic context...*

*4 Minimum impact...Potential adverse impacts on the natural, cultural and social environment and surrounding communities should be minimised as far as practicable.*

*7.04 Management of the reserve or zone should contribute to regional and national development...*

Without social, economic and management related research (aiming for best practice), meeting the regulatory requirements for management are unlikely to be achieved.

This should include an Action to ensure baseline information is collected, against which to measure changes over time and the success or otherwise of the network meeting Plan Objectives.

The fishing industry strongly encourages Government to make a formal announcement prior to or at the time the Plan is finalised, indicating its level of commitment of funding to this critical area of reserves management.

Reflecting on the existing South-East, the Director of National Parks Annual Report 2010-2011 noted *"The department intends to develop a research and monitoring strategy to identify and address the main knowledge gaps for the Reserve Network as part of the management plan."* The 2011-2012 report notes *'The department intends to develop a national Commonwealth marine reserve research and monitoring strategy to identify and address national priorities and synergies.'* What is the status of these strategies, noting that the former has been under development for some years?

The fact that there is yet to be a research and monitoring strategy developed for a network that has been in place for over 5 years is very concerning, pointing to serious resourcing deficiencies within the Department and indeed real government commitment to marine reserves.

See also “Research and Monitoring” below.

## **Strategy 2 – Minimise impacts of allowable activities through effective assessment of proposals, decision making and management of reserve-specific issues**

NSIA is responding separately to the proposed Assessment Framework. This section should be read in conjunction with that preliminary submission.

Para 4. – The principle of assessment before authorisation is reasonable, in theory. However, it is not clear what the assessment process(es) may be. This needs to be clarified, and as suggested in comments on Part 5 of the draft Plan, needs to be described under a clear and transparent process for Class Approval amendments or any other decision-making process that may be considered as part of this Plan.

Para 4. – “...not be issued if an activity is considered likely to have unacceptable impacts...”. This should be more clearly defined, so it is explicit that the activity is considered likely to have unacceptable impacts on the stated values of the relevant Reserve, to avoid it being used in a more generic sense. This section does not provide enough information to ensure a clear and transparent decision making process.

Para 5. – The principle of streamlining and avoiding assessment duplication is strongly supported. However, the fishing and aquaculture industry has consistently questioned why a separate, and in our view flawed, risk assessment process has been undertaken for the fishing industry, when there has been no similar risk assessment process undertaken for other industries such as oil and gas? It is our strong view that the fishing industry be treated equitably with other reserve users. We note that the management plan may allow for users/uses to not have any direct assessment made – this is inconsistent with treatment of the fishing industry, including where fishing activity is low risk.

Para 6 – “A separate assessment under this Management Plan may not be required...” is supported in principle, however, it is unclear what criteria will be used to assess whether a separate assessment under the Plan is required. These criteria should be developed with consultation and inputs, and explicitly outlined in the Management Plan.

Para 8 – As previously stated, the Class Approval construct for the fishing and aquaculture industry is generally supported, in principle, noting industry concerns about the timing of the draft Plans

being finalised prior to arising legal and policy implications being addressed and management arrangements being developed and agreed. Also note below the need for permits to be issued where necessary.

Para 9 - Variation, suspension or cancellation may be a reasonable option in some circumstances, however, this para must include “in line with the review process outlined in Part 5”, or similar. Part 5 then will elaborate a very clear review process, or refer explicitly to the process to be followed (once finalised and agreed) in the Proposed Assessment Framework, including circumstance for variation, suspension etc and stipulation of (not exhaustive list) relevant stakeholder participation in the decision-making process, rights holders right to reply and appeal rights. To do otherwise creates significant and unacceptable uncertainty as well as failure of due process and natural justice. See more specific comments on Part 5.

Actions – A5. The process for assessment, decision making and authorisation would preferably be outlined in the Plan itself, rather than being established at some time in the future as the implications for the Plan itself are unknown. To forge ahead as proposed leaves network users in an unacceptably uncertain position regarding future assessment and access. It should also be stated that the processes be accountable and transparent.

A6. Industry supports the intent of this Section, which explicitly acknowledges the need to consult with the stakeholders likely to be affected by a decision under the Plan (referred to as “relevant users”). Notwithstanding, NSIA cannot support anything less than stakeholders with statutory rights that are affected MUST (not *may*) be consulted and their views heard. Anything less abrogates the government’s responsibilities regarding natural justice and also the whole of government commitment to secure and tradable fisheries access entitlements.

A6 – Stakeholders who are likely to be impacted (and particularly those holding statutory rights or other entitlements) must also be provided a right of appeal.

A clearer, and legally robust, stakeholder engagement/consultative process should be stipulated. The Plan should define a process, which provides certainty that fairness, transparency and due process will be followed prior to any decisions being made. This Action then needs to refer to that process. “...as far as practicable...” is unacceptable and in addition provides no certainty or clarity of process and implies that consultation is optional.

Outcomes – NSIA considers that the outcomes sought do not align with the management principles and recommends the addition of outcomes relating to regional and national development.

### **Strategy 3 — Protect the conservation values of the marine reserves network through management of environmental incidents**

This strategy is considered limited in scope. Although managing incident response is necessary, the plan does not address how the range of other pressures (not fully identified as noted above) will be dealt with.

Further, the Strategy appears to be very reactive. All Actions are focussed on response. Other appropriate Actions might be to “Identify and understand the possible and/or likely incidents that may threaten conservation values of the reserves”, “Assess, through a risk based approach, the likely or possible consequences of incidents occurring” and so forth.

### **Strategy 4 – Facilitate compliance with the management plan through education and enforcement**

This strategy, and actions, could be strengthened. The outcomes proposed in the draft appear only to relate to users. It would be appropriate for the outcomes to also focus on the performance of the “regulator”, being the DNP.

Also note that there is no strategic view (given 10 year timeframe) for compliance. We suggest a strategic plan be developed, supported by annual operational plans. NSIA also suggests that further consideration be given to better articulating the ‘education’ required.

A13 – Disseminating information does not equate to education. Suggest an appropriate and relevant education strategy be developed.

It is widely recognised that stakeholders can and do play a very important role in relation to education and compliance. In this regard, Action 14 is supported.

A 15 – This action is supported and should require that regional compliance risk assessment is undertaken as a first step, with the involvement of stakeholders, to ensure that compliance and enforcement programs are efficient and appropriately-targeted.

A 17 – This action must include some acknowledgement of the need for transparency and certainty about the collection and use of potentially sensitive commercial fishing information as part of compliance and monitoring programs, such as through MOUs with Commonwealth and State/Territory fisheries agencies.

A 19 – also add – minimises impacts on marine users (eg must be resource and cost efficient).

A20 – new action – report annually on compliance and enforcement action.

See also the “Compliance and Enforcement” section below.

### **Strategy 5 – Promote community understanding of, and stakeholder participation in, the management of the marine reserves network**

The recognition in the draft Plan of the need for effective stakeholder participation and engagement, through the establishment of “...consultative structures (e.g. committees)...”, especially for marine resource users, is positive and strongly supported. This Strategy could be strengthened further by providing more detail on the stakeholder consultative structures (eg composition of the group, its purpose, its capacity to play a formal role in the management of the reserve, etc).

Para 1 – NSIA recommends that the issues to be addressed by consultative structures also includes those others required by the management principles eg social, economic, community, regional and national development. These should not be lumped in as ‘other issues’ as they are core to the management principles for the reserves network.

A20 – A communication and education plan must be broader in scope to enlist community and user support for the reserves network. It should not only be about values (assumed reference to conservation and cultural) but also include those issues noted above. It is also about the benefit of the reserves to the community and the nation. This comment also applies to the ‘Outcomes’.

An additional action Government may wish to consider could be to:

“Build on existing partnerships and support the development of new partnerships between governments, industry and the broader community”.

Importantly, it is not clear how Government plans to develop critical elements of reserve management, prior to the Plans coming into effect in July 2014. For example, there is a need for marine resource user representative engagement forums to be established and/or continue to work on the many details relating to management (eg Class Approvals), assessment etc.

The Draft Management Plans Fact Sheet

<http://www.environment.gov.au/marinereserves/consultation/pubs/fs-draft-management-plans.pdf> does not provide any clarity. It states “Monitoring and evaluation *will* be undertaken collaboratively, and *may* involve other Commonwealth and state government agencies, research institutions and *relevant user groups*.” This reads somewhat ambiguously, and we suggest rewording of the sentence to state “...*Monitoring and evaluation will be undertaken collaboratively with relevant user groups and may also involve other Commonwealth, Territory and State government agencies, and research institutions....*”.

See also the “Stakeholder Engagement” section of this submission below.

## **Strategy 6 - Support involvement of Indigenous people in management of Commonwealth Marine Reserves**

Supported, noting many of the Commonwealth Marine Reserves are a long way offshore and therefore in many cases some considerable distance from relevant Indigenous peoples' 'sea country', or traditional usage areas. All stakeholders should have an opportunity to have a say in management and sustainable use of Australia's marine region.

## **Strategy 7 – Evaluate and report on the effectiveness of this management plan through monitoring and review**

A 26 (incorrectly listed as a second A25 in CS draft Plan) – this recognises the need to establish a program, but provides no evaluation framework or guidance. The draft SE Management Plan included:

- identifying and collecting data required for the monitoring and review program;
- analysing pressures on conservation values; and
- identifying and applying methods to understand how management strategies and management prescriptions are contributing to achieving the objectives of the marine reserves network,

under this Action, which provided some guidance.

It is an absolute requirement that the monitoring and review program should form part of the management plan, rather than being tacked on at a later date. Monitoring and review should be an ongoing process, beginning on the very first day the management plan comes into operation. The lack of a clear monitoring and review program in the Plan presents an unacceptable risk that information and feedback will slip through the cracks, and objectives will not be met, or not be able to be monitored.

We also note that the Minister for Environment (in letter dated 4 February 2013) gave a commitment that the government will closely monitor the impact of the reserves on the fishing industry and fishing dependent communities and how they adjust to it as part of the implementation of the Fisheries Adjustment Assistance Package. Where a clear and demonstrable impact in a community arises as a result of the reserve, the government would address those impacts. NSIA believes that early monitoring of management will form an important element in meeting this commitment and further supports our position above. We note the management principles support this purpose.

We support a level of annual reporting (A 27), which should include a formal stakeholder engagement component prior to being used by the Director in any annual reports. NSIA has reservations relating to reporting through the DNP annual report – the current format of reporting in this document is unsatisfactory for informing the public on the management of the reserves networks. We note that the current reports do not provide information on conservation outcomes or the range of actions and outcomes outlined in this draft plan. If there are no intended changes for the DNP report then NSIA does not support this proposal and instead recommends an appropriately relevant and comprehensive annual report be produced.

See also the “Review” section of this submission below.

## **E) Part 5 - Managing Use of the Commonwealth Marine Reserves Network**

As noted above, the fishing industry generally supports the concept of a Class Approval in relation to the Marine Reserves network and management of commercial fishing.

For pearl oyster fishing and related ancillary activities (holding, seeding and turning of pearl oysters as well as pearl farming) in the North-West region, these have been formally managed for over 50 years through existing WA fisheries and pearling legislation that is more than adequate to meet the requirement ‘... for effectively assessing and efficiently approving users that carry out a class of activities in a uniform way’. Given that other commercial fisheries will be provided class approvals on the basis of existing fisheries management legislation then pearl oyster fishing and related ancillary activities should be treated the same way.

However, we make the following observations/suggested changes to this section of the draft Plan:

### **5.1 Outline of Part 5**

We understand that fishing and aquaculture activities are prohibited in the Reserves Network, under the EPBC Act or Regulations, unless carried out in accordance with a prescription, permit or class approval issued by the DNP.

It remains unclear to industry why it is being treated separately to other marine users, in that certain specific fishing activities are prohibited explicitly in the Management Plan itself. For other users, they are either allowed, or subject to Class Approval or permits under the proposed Plan (Table 1), recognising existing assessment and management regimes. There are no explicit prohibitions outlined in the Management Plan for other uses of the marine environment.

We believe the Class Approval should be the instrument under the Plan specifying what gears are allowed in what zone. This change is fundamental to allow science based reviews (as discussed with Government on many occasions) to be undertaken formally through a transparent process

recommended in this and previous submissions (and is the subject of a separate specific preliminary submission).

See also section 5.5 below.

## **5.2 Permits and class approvals for allowable activities**

Para 1. We note that establishing permits is described in detail in Part 17 of the EPBC Regulations. Proposed section 5.5 should be amended (as outlined below), to allow the Director the ability to issue permits for commercial fishing and/or aquaculture, when and if required, under the EPBC Regulations.

Class Approvals - It is worth noting that in the *EPBC Act*, Class Approvals are only stipulated for use in *the EPBC Act* prior to management plans coming into effect (s359B).

It is essential to clarify that the head of power for setting up Class Approvals is proposed to be the management plan itself (Para 1 appears to confirm this, stating “Class approvals, and the rules for their issue and management, are established by this plan...”). There is a whole legal and policy discussion needed on this issue, including covering governance and the items below such as the process for changing Class Approvals, and formulation of clear and transparent processes for review and/or appeal rights.

The NSIA cannot support 5.2 as drafted. Industry has indicated in principle support (as already noted) for the concept of a class approval largely due to its intended administrative efficiencies over otherwise individually required permits. NSIA cannot support an alternative that does not maintain the basic legal rights relating to due process and natural justice available with a permit, nor the expectations relating to activity risk.

NSIA strongly recommends that further discussion be held with SEWPaC as a matter of urgency on the status and implementation of a class approval given the unacceptably high level of uncertainty relating to this mechanism.

Following the intended issuing of a Class Approval by the Director (e.g. for commercial fishing operations under section 5.2.6), approval rules apply. Noting the insufficient time to adequately investigate the implications of the proposal we make the following comments on the approval rules as an indication (not comprehensive list) of issues:

Section 5.2.8 – allows the Director to subject Class Approvals to conditions “without limitation” and, under section 5.2.9, to cancel, suspend, vary or revoke a Class Approval without input or notice to industry. This creates unnecessary uncertainty and lack of security to operators. The industry acknowledges that under some circumstances, the outcomes envisaged in the intent of the Section may be necessary. However, those outcomes must be derived through an agreed,

transparent, and accountable process, particularly in relation to “acceptable” methods of operation, or in the context of new gears and/or new information becoming available that could be reviewed scientifically and/or recommended through the proposed consultative committee.

We strongly suggest an additional Sub-Section 5.2.9 (f) after (a) to (e), that states “but, (f) a) to e) only apply once the issue has been considered by industry, SEWPAC and where relevant other parties under an agreed Assessment Framework, and the Director has considered all recommendations and/or advice from those consultations, prior to making a decision”

5.2.11, 5.2.12 – We note that there is no definition of ‘class of person’ to which the class approval will relate nor how dealing with such ‘classes of persons’ will practically operate either at an administrative level or in consideration of the impacts on the rights of individual persons within that class. For example, ‘A class approval may be revoked at the request of the persons to whom the approval relates...’ – how is this to be practically implemented if (for illustrative purposes) the class of persons is all fishing concession holders, or all fishers, in the region – is it by majority or consensus? Is this at all feasible even at a fishery or reserve level. The Class Approval can also be varied to remove a person who (a) “has breached a condition of the approval” –again, the due process procedures for dealing with alleged breaches must be articulated prior to such a hard, and potentially unfair, condition being introduced.

Further, for 5.2.12 after (b), we strongly recommend “...; and (c) that the Director is satisfied that the removal of the person is the only option available to avoid a similar or other offence by the person”, or similar.

As noted earlier in the submission, the circumstances under which particular compliance action will generally be taken needs to be made clearer.

### **5.3 General use prescriptions**

5.3.2 – We question the need for provisions allowing dumping of industrial or domestic waste in a Commonwealth Marine Reserve, in the context of protecting biodiversity and equitable treatment of users. However, noting that the regulations already provide for this we suggest that the plan include provisions for a risk assessment to be an explicit requirement, prior to making such a decision to permit that activity.

### **5.4 Commercial Shipping**

Noting the intent to roll-over existing arrangements, we consider the current proposed provisions do not adequately reflect responsive and adaptive management nor the range of ‘of concern’ pressures such as ship strike and noise outlined in the bioregional plans. This position is taken

particularly given that current data and forecasts suggest shipping growth of more than 100% in the coming years.

In relation to vessel collision and cetaceans, we question this omission when the Australian Maritime Safety Authority issued a notice in August 2011 on minimising the risk of ships colliding with cetaceans noting that, “...*Collision with cetaceans (ship strikes) is an issue of growing concern and has become more common due to the increase in both vessel traffic and whale populations.*”<sup>3</sup>. The issue is also raised as a potential concern in the bioregional plans. This should be addressed explicitly in the Management Plan as an issue.

## **5.5 Commercial fishing and aquaculture**

We recommend that food security needs to be mentioned and recognised in the opening paragraph, in line with the current Government programs to ensure this is explicitly recognised by Australians as a critical issue.

As stated above, we support, in principle (subject to resolution of issues raised elsewhere), that the Class Approval should be the management instrument under the Plan, stipulating what methods are allowed or excluded from various reserves and zones. Certainty (for both protection of biodiversity and sustainable use) over the 10 year life of the Plan can be provided by a transparent, science based risk assessment and review process. As reflected in previous submissions and this submission, such a process has not been undertaken. This should be referenced in the general comments Section 5.5.

Section 5.5.1 should be amended to explicitly allow the possibility for the Director to issue a permit for commercial fishing and aquaculture, if necessary. Specifically, a new clause should be added at 5.5.1 (f) stating “...a permit issued by the Director under r 12.34 (1)(b) of the EPBC Act Regulations.”

Consistent with the position stated as for sections 5.1 and 5.5, Sections 5.5.4 – 5.5.6 (5.5.4 - 5.5.5 for the North, North West and Temp East, 5.5.4 - 5.5.9 for CS) appear superfluous and inconsistent with the treatment of all other user groups. We cannot identify where any other marine users are excluded by the prescriptions of the Plan itself. Section 5.5.1 refers directly to the Class Approval for commercial fishing, which will exclude the methods deemed incompatible with the different zones. It is not necessary for fishing methods to be excluded under two legal instruments (the Plan itself, and the Class Approval). The implications of such an approach are not consistent with the management principles of a risk based approach, adaptive management, and effective and appropriate to socio-economic considerations.

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<sup>3</sup> [http://www.amsa.gov.au/shipping\\_safety/marine\\_notices/2011/12-2011.asp](http://www.amsa.gov.au/shipping_safety/marine_notices/2011/12-2011.asp) . Author’s emphasis.

In Section 5.5.7 (5.5.6 for North, North West and Temp East, 5.5.10 for CS), the prescription “Fishing methods and gear types not specified in a class approval, or conditions of a class approval, issued under this plan, must not be used” should end with “...prior to assessment and approval of that gear being made under the agreed Assessment Framework referred to in this Plan”. See comments above in relation to Section 5.2 of the proposed Plan, relating to the need to more clearly outline that a review/assessment framework will be applied. Such a review framework must be an explicit undertaking in the Plan. Again, NSIA has responded directly on the Proposed Assessment Framework.

In relation to aquaculture in the North region, we note the draft Plan defines pearling operations as – ‘Pearling, pearl oyster hatchery activities and pearl oyster farming’ (s5.5.10, p50, para1). These sets of words do not provide a clear understanding of actual pearling activities and need to be amended as follows – ‘Pearling activities include ‘fishing for pearl oysters, holding, seeding, and turning pearl oysters as well as pearl oyster farming’. Pearl oyster hatchery activities are part of pearl oyster farming.

In Table 5.4, only the first two rows and vessel transiting should be included, consistent with the above recommended changes. More importantly, a note at the bottom of Table 4 states “Gear types not specified in a class approval as gear that may be used will require assessment before use may be approved.” As stated above and below, that assessment framework needs to be explicitly acknowledged as part of the Plan (not just as a note under Table 4), including an outline of the process, decision making and review aspects of such a framework.

## **5.8 Mining operations (including exploration)**

It is unacceptable that the commercial fishing industry is subject to such a high level of scrutiny (FGRAs supposedly used to determine what fishing methods are compatible in each zone, based on “risk assessment”), whilst at the same time having a Plan that allows oil and gas activities to potentially take place in Marine National Park and Habitat Protection Zones (Section 5.8.7 of the Plan). This clearly highlights the lack of equitable treatment and assessment of risks between regions and methods/users within regions.

This does not apply for the proposed Coral Sea draft Plan.

## **5.10 Research and monitoring activities**

This section is supported.

It should be noted though that any verbal undertakings by the Minister or SEWPAC regarding access to otherwise prohibited zones by certain gears (e.g. in the North - trawling by NPF to access survey

areas) is by no means guaranteed as per the current Plan wording, and certainly not an undertaking to allow commercial trawling. This view is taken based on the following sections of Part 5:

“Research in connection with commercial fishing operations will be managed in accordance with Section 5.10 of the plan.”;

“The following fishing methods must not be used:

- a) bottom trawl (including semi-pelagic demersal trawl and semi-demersal trawl);”;

(5.10) “A permit *may* be issued to carry on, in the North marine reserves network, research and monitoring that involves activities that are prohibited under Section 5.5 [Commercial fishing] if the Director is satisfied:

- a) the project is proposed to be conducted in an area where the same or similar research and monitoring has been conducted previously

- b) it is not practicable for the project to be conducted outside the proposed area,

and,

- c) the project will provide information relevant to understanding the impacts of the activities on the marine environment or to supporting sustainable use within the marine reserves;

- d) the project activities will not have an unacceptable impact on the values of the area in which the research or monitoring will be conducted;

- e) the project will be conducted in a manner not inconsistent with achieving the objectives of this management plan.”



### 3. KEY PRINCIPLES

Within the truncated timeframes, meaning minimal consultation and engagement has been possible at various stages of the process, the fishing industry has worked as constructively as possible with the Commonwealth Government and other stakeholders to try and achieve mutually acceptable outcomes in the complex process of regional marine planning in Commonwealth waters.

Within this context, main areas of agreement, fundamental concerns and key recommendations have been reported throughout the fishing industry's engagement, including through the established and ongoing Fishing Industry Reference group and previous NSIA and individual submissions, including this submission.

As part of feedback on the draft Plan, industry reiterates these key issues and principles, including those summarised in Attachment A, Suggestions and recommendations to improve the draft Plan are included.

#### A) Objectives

We support the draft Management Plan objectives that enshrine both the need for the Reserve Networks to meet conservation objectives of biodiversity and other natural and cultural values of the network, but also that the Networks provide for sustainable use of the natural resources within the marine reserves network.

We suggest a further objective should be to ensure the networks will be developed, managed, monitored and improved through effective stakeholder engagement.

For example, "The objectives of this Management Plan are to:

1, 2 (as proposed); and

3. Enhance community and industry stewardship and understanding of the values and benefits of the network through research, monitoring, education, and involvement in management of the Reserve Network."

Inclusion of this third objective will more explicitly and effectively link the objectives to the Strategies of the Plan as well as meet the suite of management principles.

## **B) MPAs are for biodiversity conservation, not fisheries management**

The fishing and aquaculture industry reiterates its clear understanding that fisheries management is neither a goal nor principle for the marine reserve networks<sup>4</sup>. We note the government's commitments to not only minimising, but ensuring that marine reserves have the least possible impact on existing fishing operations, and to implementing a system of secure and tradable fisheries access entitlements to maximise the value from, and conserve fisheries resources<sup>5</sup>. We also note the management principles also seek to minimise adverse impacts and include socio-economic context considerations.

## **C) Developing management arrangements**

Given the draft Plan is so high level, it is very difficult to comment on specific management arrangements, given none have been developed or proposed for consideration. The fishing and aquaculture industry looks forward to close involvement in developing the Class Approval for the region and fishing assessment framework. These critical documents need to be reasonable, efficient, effective and workable, and include significant industry input.

In this regard, we seek clarification of process to finalizing management arrangements, including funding and appropriate time/engagement of the industry, including through the existing Reference Group(s).

The fishing industry understands the importance of effective marine reserve management and that to accomplish this, certain levels of information and reporting are necessary. SEWPAC has previously indicated that only necessary information for effective Reserve Network management and compliance should be available, under acceptable, transparent and streamlined reporting requirements that take into account the need, at times, for confidentiality of industry data. This can only be developed and achieved through effective engagement with the fishing industry.

The principles behind access to necessary information and specific management arrangements were largely agreed during development of the South-East network, and include:

1. Achieving the most cost-effective outcome that involves the minimum of industry disruption/inconvenience
2. Protection of privacy/confidentiality of data

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<sup>4</sup> Goals and principles for the establishment of the National Representative System of Marine Protected Areas in Commonwealth waters

<sup>5</sup> Australian Government. *Fisheries Adjustment Policy*.

3. Ensuring MPA management costs are not shifted onto the industry
4. The monitoring information sought by SEWPAC only relates to activities inside the reserves
5. To avoid duplication for fishers, monitoring data should be sought from existing sources
6. Compliance (including the need for Vessel Monitoring System or “VMS”) data will only be sought for fisheries required to have such systems in accordance with fisheries management requirements
7. All arrangements will be covered by an MOU between SEWPAC and the relevant fisheries management agency, and include effective cost sharing arrangements where applicable.

Aspects of the South-East interim arrangements, such as clarification that VMS and catch data would only be sought where necessary to effectively manage the CMR network (ie, for activities inside the Reserve Network), were positive outcomes. More importantly, the development of MOUs with the relevant fisheries agencies and the commercial fishing industry, was critical for the industry’s support and certainty. This ensured transparency and certainty about how potentially sensitive commercial fishing information was to be collected and used as part of the SE Reserve Network compliance and monitoring program.

As indicated previously in this submission, there is a need to provide greater certainty and include these aspects in the development of arrangements for management of the region, especially in relation to finalising the Class Approval for the region.

## **D) Equitable treatment**

Industry has previously expressed the view that the different zoning arrangements classified as IUCN Category VI seem to be a resource allocation exercise, rather than genuine IUCN Category zoning based on science. This inequitable treatment of the commercial fishing industry by creating such zones as “Recreational Use” zones remains in question, and is not supported as it appears not to be based on science, or an evaluation of the risks and impacts associated with different gear types.

Industry reiterates that the same level of data collection, monitoring and reporting should occur for all users, particularly those of commercial extractive operations such as recreational charter boats. We strongly believe that under the management plan, examining the impacts of all extractive activities, including recreational and charter operations, should be a high priority.

Equally, the application of compliance and enforcement measures should be equitable and transparent. Any vessel not currently required to have a VMS fitted as a requirement under the

relevant fisheries management plan should not be required to pay for the costs to fit a VMS simply to operate in the multiple-use areas of the MPAs.

### **E) FRA and review process for new gears/information**

Industry accepts that to minimise Class Approval, management and enforcement complexity, the same fishing methods (generic rules across the zones in the Network) will initially be permitted in each of the zones where fishing is permitted in the Marine Reserves network. This will negate the need to issue individual permits (or Approvals) to operators and allow marine reserves to be initially implemented and managed as efficiently as possible.

Where fishing can be proven to be applied more specifically, without compromising conservation objectives or values in a specific reserve, this should be available for consideration by industry and Government on a case by case basis in the future.

As detailed in “Draft management plan comments” above, the Plan should allow for explicit review and assessment of allowed activities, based on a clear, transparent process and sound science. This review framework, or reference to it, needs to be built into the Plan.

In addition, we note with concern that assessment of risk has been undertaken within the context of fishing activities and not in relation to all risks, either in isolation or cumulative, resulting from the identified pressures. Risk assessments for other activities, if conducted, are not publicly available and we believe they should be made publicly available.

As expressed in previous submissions regarding Marine Bioregional Planning, this is of serious concern to the fishing industry, given the strong regulatory (FMA Act, EPBC Act, State fisheries and environment legislation) backdrop and long history of substantial industry funds (tens of millions of dollars) contributed to fisheries and environmental management and research.

### **F) Stakeholder engagement (Management, education, compliance)**

The fishing and aquaculture industry fully supports the ongoing strategy of stakeholder engagement as set out in the *Marine Bioregional Plan*, and the draft Plan, to ensure that the challenging task of managing the CMRN is effective and cost effective.

The commitment to an education and communication plan, working effectively with user groups and establishing formal consultative structures to ensure effective and inclusive management of the reserves, as indicated in Strategy 5, Actions 20-22, is welcomed by the commercial fishing and aquaculture sector. Ideally this would involve the establishment of a formal Advisory Committee, under section 511 of the *Environment Protection and Biodiversity Conservation Act 1999*, drawn

from user groups and other stakeholders. Terms of Reference for the operation of the Committee(s) will be required, and should include a membership list of relevant stakeholders (particularly managers and users), a broad scope of work, and a process for review of the effectiveness of the plan in meeting its objectives.

A key to the successful development of effective management arrangements will be the capacity of the various stakeholder groups to engage in the consultation process. The financial support provided by the Commonwealth Government has been, and will continue to be, essential in ensuring all relevant sectors of the industry are fully and effectively engaged in the marine bioregional planning process. To this end, the fishing industry seeks reassurance that appropriate funding for industry consultation/engagement will remain an important component to the marine bioregional planning and management process. Specifically, some level of commitment (including financial) should be included explicitly in the Plan.

## **G) Costs and funding**

We reiterate that the Government must adequately fund all aspects of the management of the CMRN. In particular, the Commonwealth MBP process is an acknowledged broader public good activity involving a reallocation of resources from the private sector to the community. It would be unacceptable for fisheries management levies to be used to cover marine reserve management costs, given the clear separation between the aims and activities of the CMRN and Commonwealth and state/territory fisheries management objectives.

Consultative structure(s) should be given the opportunity to participate in the review of annual budgets for the CMRN and to make recommendations about budgetary management to the Director of National Parks.

The Director of National Parks Annual Report 2010-2011 notes *"The department intends to develop a research and monitoring strategy to identify and address the main knowledge gaps for the [South East] Reserve Network as part of the management plan."* What is the status of this strategy, noting that has been under development for some years? More information is required on commitment to funding and resources in Commonwealth Marine Reserve Network Management Plans. Without significantly greater resourcing, including funding, we hold significant concerns and doubts about the ability of Government to adequately role out management plans and implement ongoing management arrangements, education, monitoring and research for all regions around Australia.

## H) Compliance and enforcement

At present, the draft Plan is far too light-on in detailing compliance and enforcement arrangements. We acknowledge that the Class Approvals are yet to be developed for each region and this is part of the reason we believe so strongly the Class Approvals process and framework needs to be developed and incorporated in these Management Plans before they are finalised. Leaving the Class Approvals process to a later date means it is unclear how clarity, such as is provided above under current interim arrangements in the South-East region (Attachment B), will be delivered in the context of the management plan. Further, and as raised above, it also results in significant uncertainty for the industry, both in terms of trying to assess impacts of the reserves and for future/ongoing implications for fishing and aquaculture operations.

Strategy 4 and Actions 12 to 19 of the draft Plan are supported, but again leave all of the development to take place *after* the Plan is approved and in place which is NOT supported.

An education program and effective communication channels are essential to ensure that all users, including fishing and aquaculture operators, clearly understand the purpose of the CMRN, the zonings, conditions and any changes to rules. The education program will need to begin **before** the management plans are in operation. The Government apparently intends to finalise the management plans in mid-2013 and to implement them in July 2014. This leaves a 12-month period for education and outreach, meaning that planning for this phase must begin immediately.

Compliance enforcement, monitoring and reporting activities should be conducted in the most cost-effective and efficient way. Duplication should be minimised: we should use existing frameworks in State/Territory and Commonwealth fisheries agencies wherever possible, and draw on the practical experience of fishing operators and compliance officials when assessing options.

The final Plan should require that regional compliance risk assessment is undertaken as a first step, with the involvement of stakeholders, to ensure that compliance and enforcement programs are efficient and appropriately-targeted.

Management plans should also provide for Memoranda of Understanding (MOUs) between DSEWPaC and fisheries management agencies, to ensure transparency and certainty about the collection and use of potentially sensitive commercial fishing information as part of compliance and monitoring programs.

## I) Research

Strategy 1 and its Actions are welcomed. However, they fall short of setting out a formal and measurable marine research strategy for the Plan. Scientific data for assessing the effectiveness of

the CMRN and its management will be missed unless there is a coordinated effort to collect it; baseline data is particularly important. Planning for this phase should begin immediately.

Important fisheries management research, funded by industry, is undertaken in parts of the CMRN. This research must be allowed to continue. Industry-initiated research activities should also be recognised in broader research strategies for the CMRN, including through Government funding for activities that make a demonstrable contribution to knowledge about biodiversity and to the sustainability of extractive industries within the reserves.

On proclamation, Government released an “Outline of management principles” document for the SE marine Reserves Network. This document, among other things, stated the following about research and monitoring:

*“Strategic research and monitoring will be applied throughout the network in order to improve understanding and awareness of the natural systems and human use associated with the reserves, the threatening processes acting on those systems, and the potential costs and benefits of alternative management strategies to address those threats. Accurate, relevant and accessible information that is generated from research and monitoring projects in the natural and social sciences will be used for:*

- *adaptive management, through routine risk assessment and ongoing decision support; and*
- *reporting on progress of management activities and achievement of management objectives.*

*The immediate research priorities are to establish baselines for future monitoring of natural systems and human use in the Network. Regarding natural systems, these baselines need to provide an indication of current community structure and habitat composition. Regarding social systems, historical baselines for the types and extent of resource use in the area need to be established.”*

As stated previously, it is disappointing and unacceptable that Government has not developed a research strategy with input from stakeholders, or even a process to achieve one, including the need for stakeholder engagement in the process, in the South-East region, given it has been in place for over five years. This again points to a lack of adequate resourcing and funding to ensure effective management of the CMRNs is possible.

## J) Monitoring and Review

Strategy 7 of the draft Plan, outlining the high level aspirations and Actions for monitoring and review of the management arrangements, appears to be only one component of what we would consider to be an appropriate strategy. It is unclear what baseline data, information and indicators will be used to determine if the Network is achieving its objectives. Proxies were used in many instances to decide the location and zoning of the reserves. There is a need to determine if those proxies do represent/contain/are improving conservation values based on agreed performance indicators.

Further, draft Strategy 7 itself states “The primary focus of this strategy is on evaluating the effectiveness of the *management arrangements* outlined in this Management Plan...”. We contend that the strategy should not only be focussed on assessing the effectiveness of management arrangements, but on the effectiveness of the CMRN itself in meeting the objectives of the Plan. In this regard, Strategy 7 should have strong links back to Strategy 1.

We note that the 2008 UNEP-WCMC review of progress of national and regional networks of marine protected areas suggested:

***Improve management of MPAs and of the MPA networks as they are established:** It will be important to ensure that the new focus on establishing MPA networks does not result in the creation of more unmanaged MPAs or ‘paper parks’. Assessing management effectiveness can help to encourage good management, and such evaluations should be undertaken on a regular basis. The basic principles of good MPA network management and governance, as opposed to those for individual MPAs have yet to be clearly identified, with indicators that can be used to measure the success of the network in reducing the rate of biodiversity loss.<sup>6</sup>*

Other considerations also come to mind from the fishing industry perspective. Is there a fisheries benefit to MPAs? Is there research to help answer this? Have the MPAs impacted fishers’ behaviour and therefore CPUE and stock assessment outcomes? How should Commonwealth marine reserves be taken into account for assessment of species and “ecosystem based fisheries management”?

The Plan should spell out much more clearly an agreed and regular reporting framework, through consultative structures, to ensure SEWPAC are both reviewing and reporting on progress. This is a fundamental annual requirement of the fishing industry under other sections of the EPBC Act (for example, through Strategic Assessment and/or WTO reporting requirements). There is no reason that the Marine Reserves network should not also need an annual review process.

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<sup>6</sup> UNEP-WCMC (2008). *National and Regional Networks of Marine Protected Areas: A Review of Progress*. UNEP-WCMC, Cambridge. P v. [http://www.unep.org/regionalseas/publications/otherpubs/pdfs/MPA\\_Network\\_report.pdf](http://www.unep.org/regionalseas/publications/otherpubs/pdfs/MPA_Network_report.pdf)

The Government's "Outline of management principles" document, released to industry in late 2006, included the following useful outline of performance review:

*"As part of the adaptive management cycle, routine performance assessment will be applied to determine if those changes are acceptable and to improve management decisions and programs over time. In assessing the overall performance of management, the following issues will be considered:*

- *Contextual issues, such as significance of values and threats, policy settings, levels of awareness and compliance;*
- *Adequacy and appropriateness of the design of the Network and the management plans;*
- *Adequacy of financial and technical resources for implementing management activities effectively;*
- *Efficiency and appropriateness of management processes, including resource use and decision-making structures;*
- *Delivery of expected products and services, including the extent to which planned management actions have been implemented; and*
- *Impacts of management efforts, including measures of environmental, social and economic change over time."*

The fishing industry strongly believes the draft Plan needs to be significantly strengthened in this area. Further detail and suggestions are made in the "Draft management plan comments" section above.

## **Appendix A – Network descriptions, values and maps**

No additional comment.

## **Appendix B – Legislative framework**

We note that UNCLOS provides for more than shipping transit rights. Responsibilities regarding optimal resource use etc are very relevant to these plans.

## 4. CONTACT DETAILS

### **Commonwealth Marine Reserves Fishing Industry Liaison Officer**

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Eric Perez, Qld (North and Coral Sea)

Grahame Turk, NSW (Temp East)

## **Attachment A - MPA principles continuously raised by the fishing industry:**

1. MPA proponents should be required to clearly and comprehensively enunciate the park's biodiversity/conservation objectives;
2. Any overriding national policy considerations (e.g. energy security) must be identified at the outset;
3. A comprehensive and adaptive socio-economic impact assessment should be undertaken as soon as draft boundaries have been established;
4. Industry must be fully engaged in determining MPA boundaries, zoning and operating rules;
5. Relevant Commonwealth and State/Territory fisheries management agencies should also be fully engaged in the development and management of MPA's;
6. Comprehensive and transparent risk assessment processes should inform any decisions to limit specific fishing activities in no-take or multiple use areas:
  - Fishing activity should be permitted in MPA's where it does not jeopardise the key ecological values that the MPA seeks to preserve or restore; and
  - Commercial, recreational and charter sector must receive equitable treatment in terms of restrictions on the use of specific fishing gear;
7. Unavoidable impacts on the commercial fishing sector and allied industries and communities must be minimised;
8. Fair and adequate compensation or adjustment assistance should be paid for any unavoidable impacts such as those associated with the loss of access to fishing grounds and/or the value of fishing rights;
9. All MPA development costs must be met by government (including the allocation of funding to assist effective industry consultation/appointment of an industry liaison officer);
10. All operational costs, including the costs of any monitoring, compliance and surveillance should be fully borne by government and not included in fisheries management agency's levy bases; and
11. The operations of the MPA network should be subject to periodic review, evaluation and reassessment.

## Attachment B – compliance considerations from SE

From Commercial Fishers Users Guide South East Region, 2007:

*“The Department intends to use a range of methods to ensure compliance with approval conditions, the Environment Protection and Biodiversity Conservation Act 1999 requirements and Environment Protection and Biodiversity Conservation Regulations 2000 requirements for the South-east Commonwealth Marine Reserve Network.*

*An extensive education and awareness program will be developed to ensure that operators are aware of the marine reserves, their identified values and any restrictions on activities applicable within the reserves. In addition the Department has already made available downloadable boundary data for the network, so that users of the reserves will be able to obtain and load relevant spatial information to their navigation systems. The primary aim of this education and awareness program is to encourage voluntary compliance.*

*It is intended to adopt a phased and flexible approach to compliance and enforcement for the Reserve Network during the initial period after proclamation. During the first three months warnings will be given to operators found breaching the conditions of approval or any requirements of the EPBC Act or Regulations where:*

- no previous breach has been recorded;*
- the operator can reasonably demonstrate that the breach was unintentional; and*
- the breach was not likely to cause significant harm to the values of the reserve.*

*A deliberate, reckless or grossly negligent breach during this period that causes, or is likely to cause significant harm to reserve values may lead to prosecution or other legal or administrative action being taken.*

*There are several potential sources of information that will assist the Department to ensure compliance. Where possible it is the intention of the Department to use systems already in place to reduce costs and administrative burdens for both industry and the Australian community. The Reserve Network is primarily focused on spatial management, and therefore we expect that Vessel Monitoring System (VMS) information will be a key compliance and enforcement tool. The Department is negotiating with the Australian Fisheries Management Authority (AFMA) and state fisheries management agencies to develop arrangements to access this information where available. In the absence of an agreement to share this spatial information or where this information does not exist, it may be necessary to place greater reporting requirements on users. The Department will also consider using the statutory tools available (such as monitoring warrants) to obtain VMS data from fisheries management agencies.*

*The provision of VMS data will only be sought from AFMA or state fisheries management agencies, where;*

- there are reasonable grounds to suspect that a breach of the Act or the Regulations is likely to occur (as defined through the compliance risk assessment process described below), or*
- other information comes to hand that gives the Department reason to suspect that a breach of the Act or the Regulations has occurred, or*

- *the Department wishes to monitor the use of a CMR to determine zoning compliance.*

*This information will be collected and used in accordance with any Memorandum of Understanding negotiated between the Department and AFMA or the state fisheries agencies.*

*Surveillance operations will be undertaken through several avenues. The Department will be tasking Coastwatch to undertake aerial surveillance within the Reserve Network. Recently increased surveillance aircraft capacity based in Melbourne will be utilised for this purpose. Preliminary negotiations with state agencies to provide a range of compliance services are also under way. It is envisaged that local fisheries officers / enforcement personnel would provide random and targeted compliance and enforcement services including at port and at sea inspections and boarding, intelligence acquisition and community awareness and education programs and air surveillance support.*

*A detailed compliance risk assessment process is under way to identify spatial or temporal risk areas within the Reserve Networks. For commercial fishing operations this compliance risk assessment is based on historical activity levels drawn from a number of sources, including catch and effort data, and assessments of the environmental consequence of undertaking those activities. The results of this compliance risk assessment will be used to identify medium to high risk areas and sectors that may benefit from targeted education and awareness programs. The compliance risk assessment will also be used to target and prioritise patrol and air surveillance operations, and will be reviewed while the interim management arrangements are in place. Where the Department identifies a suspected breach of the conditions of approval (identification of possible breaches may be from a variety of sources including Vessel Monitoring System data, catch and effort data, aerial surveillance, at sea-surveillance or intelligence) the holder of the approval will be notified of the suspected breach and be given the opportunity to provide an explanation.*

*Where a satisfactory explanation is provided:*

- *the approval holder will be advised by registered mail; and*
- *the incident will be recorded and may be taken into account in relation to future incidents involving the approval holder.*

*Where the explanation of the contravention provided by the holder of the approval is not satisfactory, or the holder of the approval fails to provide an explanation report for the contravention within 14 days, the approval may be revoked or amended to include additional conditions. Where this course of action is taken, the holder of the approval will be informed of the action by registered mail.*

*An approval holder who is aggrieved by a decision to revoke or amend their approval will have review rights as provided by the Administrative Decisions (Judicial Review) Act 1977. Conducting commercial fishing operations without approval or in contravention of approval conditions is an offence (Section 354A).*

*The maximum penalty on conviction is up to two years imprisonment or 1000 penalty units or both. Alternatively, the Federal Court may impose a civil penalty of up to 500 penalty units for an individual or 5000 penalty units for a corporation (Section 354). One penalty unit currently equals \$110.”*