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15th April 2013

Submission on the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013

Dear Sir/Madam

WWF-Australia and the Australian Marine Conservation Society welcome the opportunity to review this amendment and appreciate the opportunity to make a submission.

We have briefed the Environment Defenders Office Queensland on our views on this amendment and they have prepared a submission which is attached.

Thank you for your consideration.

Yours sincerely

Richard Leck
WWF Australia
Great Barrier Reef Campaign Leader

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Australian Marine Conservation Society
Director

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Submission on the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013

Prepared by

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Summary

1. Urgent passage of this Bill would be a valuable as it imposes clear cut duties on the Federal Environment Minister to implement certain key recommendations of the World Heritage Committee. We propose some minor amendments to the Bill, and discuss the need for key components in the Great Barrier World Heritage Reef Strategic Assessment.

General Comments

2. The Bill proposes to put in place amendments to national environmental laws to implement recommendations made in June 2012 by the World Heritage Committee incorporating those of the UNESCO reactive monitoring mission.

3. Since the World Heritage Committee recommendations, the AIMS study released after the UNESCO mission visit showed that in the last 27 years to 2012 the reef has lost a staggering 51% of coral cover.[1]

4. Thus implementation of those recommendations to protect the Great Barrier Reef is urgent. In June 2013 the World Heritage Committee (WHC) will meet to consider inscribing the Great Barrier Reef on the 'List of World Heritage in Danger'.

5. Since the World Heritage Committee recommendations in June 2012, the need for urgency is increased, as the Queensland government has implemented legislative and administrative initiatives that seriously weaken protection for the Great Barrier Reef,

[1] Glen De'ath et al 'The 27 year decline of coral cover on the Great Barrier Reef and its causes' *2012 Australian Institute of Marine Science* http://www.scienceinpublic.com.au/wp-content/uploads/Full-PNAS-paper-for-publication.pdf

[2] and proposed others.[3] Neither the Queensland nor the Commonwealth government has chosen to implement a moratorium on development in order to achieve the highly precautionary decision-making recommended until the Great Barrier Reef World Heritage Area Strategic Assessment is completed and then considered in 2015. [4] Instead, a range of development proposals are being progressed by both the Commonwealth and Queensland governments.[5]

Comments on specific sections of the Bill

24D No port development in designated areas

6. This provides that the Minister must not approve taking of an action if it relates to building or development or a port outside existing port areas or if it relates to the building, development, expansion or improvement of a port located in certain specified areas, including the Fitzroy Delta, Balaclava Island, Port Alma, northern Curtis Island and the north section of the Great Barrier Reef. Further the Minister must not approve the taking of an action of building or development of a port in another area if it could have a significant impact on the environment of those certain specified areas.

7. These clear cut specific duties on the Minister are an efficient way to implement WHC recommendation 5. Existing duties on the Minister[6] under the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) (*EPBC Ac*t) do not expressly stop such port expansions.

8. We propose that a definition of 'port area' is inserted. Queensland legislation includes a definition of port area that encompasses both marine port limits, port facilities and strategic port land.[7]

24E Development of Existing Ports

9. This provides that after 20 March 2013 the Minister must not approve taking of an action in an existing port area adjoining the Great Barrier Reef World Heritage Area

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[2] WWF Australia &the Australian Marine Conservation Society *Report to UNESCO World Heritage Committee* http://awsassets.wwf.org.au/downloads/mo030_fight_for_the_reef_report_to_the_unesco_world_heritage_committee_1feb13.pdf , Legal Advice, Appendix 4.

[3] *Vegetation Management Framework Amendment Bill 2013 (Qld)* would enable clearing of an estimated 700,000 hectares of young forest, some of which would be in Reef catchments. See WWF Australia *Submission on Vegetation Management Framework Amendment Bill 2013 (Qld)* April 2013. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/10-VegetatationMgmtFramewk/submissions/057.pdf

[4] Mission Report Recommendation 8: Adopt the highest level of precaution in decision-making regarding development proposals with potential to impact the property, and to Prevent any approval of major projects that may compromise the outcomes of the Strategic Assessment, until the Strategic Assessment is completed and its resulting plan for the long-term sustainable development for the property has been considered by the World Heritage Committee. During this period, the State Party is requested to ensure no developments are permitted which create individual, cumulative or combined impacts on the OUV of the Great Barrier Reef World Heritage area and its long-term conservation**.**

[5] WWF Australia & the Australian Marine Conservation Society *Report to UNESCO World Heritage Committee* p14, list of projects.

[6] *EPBC Act* s137 The Minister must not act inconsistently with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles…

[7] *Transport Infrastructure Act 1994* (Qld) s267AA.

if that action would impact individually or cumulatively on the world heritage values of the Great Barrier Reef World Heritage Area.

10. This clear cut duty gives further effect to the WHC recommendation 5.[8] An improvement for consideration would be to refer to the Outstanding Universal Value[9], including the integrity of the property as mentioned in the WHC 5, instead of the world heritage values. This would be more consistent with updated WHC concepts but if adopted other amendments to sections of the EPBC Act referring to world heritage values might be required.

24F Moratorium on all developments impacting the Reef until strategic assessment completed

11. This provides that after 20 March 2013 the Minister must not give an approval, or revoke or amend an approval, for an activity that is likely to individually or cumulatively have a significant impact on the world heritage values of the Great Barrier Reef until the strategic assessment has been: undertaken; provided to the World Heritage Committee for review and the World Heritage Committee has deemed it adequate.

12. This clear cut duty[10] gives further effect to WHC recommendation 5. A long term sustainable development plan resulting from the strategic assessment is required to be provided to the World Heritage Committee.

13. The *EPBC Act* deals with strategic assessments. Strategic assessments involve an agreement between the Federal Environment Minister and another party, such as a State government, about a plan, policy or program to assess the impacts of certain actions on of national environmental significance (MNES)[11]. It can be used to assess the cumulative impacts of a number of different actions.

14. This hopefully would result in better environmental outcomes – in theory, following an evaluation of ecosystem wide impacts on a sensitive area, certain projects may be prohibited from certain areas or concentrated in appropriate locations. Maps identifying such areas are important for certainty. The scientific rigour by which a strategic assessment is undertaken and a realistic view of the effectiveness of mechanisms it includes really determines whether it delivers improved environmental outcomes or not.

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[8] World Heritage Committee Recommendation 5: Notes with great concern the potentially significant impact on the property's Outstanding Universal Value resulting from the unprecedented scale of coastal development currently being proposed within and affecting the property, and further requests the State Party to not permit any new port development or associated infrastructure outside of the existing and long-established major port areas within and adjoining the property, and to ensure that development is not permitted if it would impact individually or cumulatively on the Outstanding Universal Value of the property.

[9] WWF Australia & the Australian Marine Conservation Society *Submission to Independent Review of the Port of Gladstone* p2, 20 March 2013. We note that it would be important to identify clear benchmarks for outstanding universal value in the Great Barrier Reef World Heritage Area to guide future management of activities.

[10] The Minister's duties also reflect best practice standards for environmental regulation by creating clear objective tests to assist good environmental outcomes. Further detail available from Australian Network of Environmental Defenders Offices, *Background Briefing Paper: Environmental Standards & Their Implementation in Law* (June 2012).

[11] *EPBC Act* s.146

15. It is important to understand that under the EPBC Act, strategic assessment agreements allow the Environment Minister to substitute a different, possibly less onerous assessment process, for new projects[12]. At worst, a poor quality strategic assessment is a way for damaging developments to escape the usual assessment processes for controlled actions under the EPBC Act.

16. As it might be 2015 before the quality of the strategic assessment is considered by the World Heritage Committee, a moratorium on development as proposed is an effective way to achieve at a Federal level the highly precautionary decision-making recommended[13] by the World Heritage Committee.

17. We refer to the submission of the Gladstone Ports Corporation. [14] This submission overlooks that WHC recommendation 5 has two elements- one restricting port development to areas outside major existing ports, the other to ensure that development is not permitted if it would impact individually or cumulatively on the Outstanding Universal Value of the property. The proposed moratorium is directed to achievement of the second element.

24G Minister cannot approve any developments that do not deliver a net benefit for the Great Barrier Reef World Heritage Area

18. This provides that the Minister must not approve the taking of an action that impacts the Great Barrier Reef World Heritage Area if the action will not deliver an overall net benefit for the world heritage values of the Great Barrier Reef World Heritage Area. The Minister must establish methodology for net benefit within 6 months.

19. 'Overall net benefit' is not enough on its own to secure an approval by the Minister under the EPBC Act as amended by the proposed Bill. Instead it is an extra and additional requirement to be satisfied by actions that are not ruled out under sections 24D, E and F.

20. Methodology of calculating net benefits is important. Their adequacy, net losses and gains should be considered in the context of whether there has been a net loss or gain in the specific habitat or ecological feature. For example in Gladstone harbour nearly 450 hectares of seagrass beds have been lost or impacted by dredging and reclamation, even though offsets for this loss included improved management of existing seagrass beds and offsets with other marine habitats.[15]

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[12] *EPBC Act* s.146B.
[13] Mission Report Recommendation 8 (refer to footnote 4).
[14] Gladstone Ports Corporation *Submission on the Environment Protection and Biodiversity Conservation Amendment (Great Barrier Reef) Bill 2013* 8 April 2013 at page 3.
[15] WWF Australia & the Australian Marine Conservation Society *Submission to Independent Review of the Port of Gladstone* p6, 20 March 2013. Despite offsets there is still a net loss of seagrass in the area which is part of the Rodds Bay Dugong Protection Area.