UNIVERSITY OF CANBERRA

20 MAY 2010

Copy.

Lisa Corbyn
Director General
Department of Environment and Climate Change
PO Box A290
Sydney South NSW 1232

Your Ref DOC10/17846

Dear Director General,

Thank you for your letter of April 23, 2010 and the attached copy of the report of the Independent Review on Marine Park Science in NSW.

Your letter covers issues raised in the report of the Independent Review and my contribution to that Review. As the email from your Department (Adrian Toovey 23/04/2010) that accompanied the electronic copy of your letter, and Mr Toovey's phone call to me just before I received that email, stressed the importance of me receiving the information it contained before I gave evidence to the current Parliamentary Inquiry on recreational fishing, I assume the relationship between the Independent Review and information I might give to the Parliamentary Inquiry is important to your Department. Unfortunately your emailed letter arrived at 6:16 pm on the Friday (April 24) of the Anzac Day long weekend (the hard-copy of your letter was received on May 11) and my appearance before the Inquiry was at 10:15 am on the next work-day (April 27). It was therefore, impossible for me to adequately consider your letter and the attached rather lengthy report before addressing the Inquiry. I accept the relevance of the opinions of the Independent Review Panel on my concerns with marine parks in NSW to the current Parliamentary Inquiry and have therefore, copied this response to you to the Chair of that Inquiry. I stress however, that this letter is a response only to your letter and not to the report of the Independent Review. It is also important for me to stress that it was most unfortunate that the Independent Review Panel's role was so restricted. It had "no role in reviewing Government policy decisions relating to declaration and zoning of marine parks" (the Chair of the Panel's letter to me received by email 2/11/09). It is the basis for those Government decisions, and the way in which the zoning of marine parks has been implemented, that remain so desperately in need of review.

It appears your letter is in response to the Independent Review Panel's statement that "there is merit in a formal response by DECCW or the Marine Parks Authority to Professor Kearney's concerns". While I appreciate that you have written I stress that your letter does not represent an adequate response to my concerns. In fact if does not even address the primary concerns of mine outlined in the documents cited in the Independent Review Panel's report (Kearney 2007, 2008, 2009)*.

(* *The references cited in this letter are either cited in the Independent Review Panel's report or are NSW Government documents of obvious origin.)*

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Rather your letter unfortunately continues the biased misrepresentation of the available evidence that has characterised much of the Marine Parks Authority's documentation. Misrepresentation such as this was the clearly stated basis of many of my concerns.

From your letter it appears that you have not read the documents of mine to which the Independent Review Panel suggested you respond (i.e. Kearney 2007, 2008, 2009). The section of your letter that refers directly to my concerns (the third paragraph on page 2) begins with your wish "to acknowledge and respond to your critique of the document A Review of Benefits of Marine Protected Areas and Related Zoning Considerations released by the Marine Parks Authority in 2006". Even my 2007 paper which did consider this document in some detail, stressed that it was the whole package of the Marine Parks Authority's documentation that was at fault, not just one paper.

You then go on to state that this one document contained "some unintentional errors that should have been identified during review, and have on account of your earlier correspondence been corrected". It was the basic thesis of Kearney 2007 that it is impossible for a bias that is throughout the Marine Parks Authority's document to be the result of random mistakes, or as you assert "unintentional errors". I provided a litany of examples that demonstrated systemic distortion of the available scientific evidence to unjustifiably support advocacy for the proposed system of blanket fishing closures that were masqueraded as marine 'protected' areas. I even demonstrated abuse of the basic principles of science by the Authority in claiming cited documents made statements and reached conclusions that those documents did not. As was the theme of my 2007 paper, continuously biased advocacy must not be confused with chance mistakes. Coordinated malpractice cannot be dismissed as "unfortunate errors".

The incorrect assertion in that same paragraph of your letter that these 'errors' have "on account of your earlier correspondence been corrected" was actually a primary theme of Kearney 2008. Some of the more obvious 'errors' were edited from the earlier version of the Authority's document but the same erroneous conclusions were still carried over to the later version. I pointed out in Kearney 2008, that the deletion of references which do not align with preferred conclusions while still maintaining those conclusions is not only contrary to the principles of scientific inquiry it actually constitutes scientific fraud. Furthermore, I went so far as to suggest that the revised paper was arguably worse than the original because the Marine Parks Authority certainly could not claim that it did not know about its flawed practices, yet it repeated them. During my presentation to the Independent Review Panel, for the whole of which a representative of your Department was present, I asked if the Panel agreed with me that such action constituted scientific fraud. The Panel's response was in the affirmative.

The final sentence in this same paragraph of your letter I find truly extraordinary. It states, "However, clearly this document was not the primary scientific basis upon which the Batemans Marine Park was established, and it should not be implied that such errors undermine the declaration and management of the marine park". The stated paper was the one referred to the public by the Marine Parks Authority as "the

Science Paper" that provided the science underlying the issues on which they had been invited to comment. The public was not advised of any other 'science paper'. Now three years later you advise that the science the public was given under the label of 'the Science Paper' was not the science used to justify the park. In other words the document to which the public was directed was not the one that was actually used! The public has been truly hoodwinked. If this paper did not contain the science you used then where is that science and why was the paper in question called "the" science paper?

Furthermore, if this paper was not the primary basis of your science why did you not simply tell me so and direct me to the correct science two years ago, rather than taking the paper off your website, 'correcting' it and then reinstating it? You do concede that the 'corrections' were made in response to my comments! Even after I criticised your second document (Kearney 2008) I was still not told it was not the right one to consider. And it remains on your website two years later!

Contrary to the inference, the next paragraph of your letter does not provide evidence of the use of appropriate and sound science in other Marine Parks Authority documents that justifies the zoning and implementation of marine parks in NSW. Science-based bioregional assessments do appear to have underpinned the description of the distribution of relevant marine biodiversity in NSW but that science is limited to description of what is in the parks, not how it is to be protected. Nowhere has management been scientifically aligned with the threats in proportion to those threats. The dominant management action (fishing closures) has been pursued in line with the fatally flawed and unsubstantiated assumption that fishing is actually a threat to biodiversity in all types of ecosystems. Assumptions of anticipated benefits are based on the abuse of science as described above. While the "Marine Parks Authority's Strategic Framework for Monitoring and Evaluation of Marine Parks and Strategic Research Plan for NSW Marine Parks 2005-2010" contains many references to the need for good science it does not actually provide the relevant science.

I find it impossible to accept that repeated and biased misrepresentation of the scientific literature and abuse of the basic principles of scientific enquiry, even if only in some of your documentation, do not "undermine the declaration and management of the marine park". This is particularly so in light of the joint Ministerial statement (Macdonald and Debus 2004) that the declaration and management of the parks would be based on world's best scientific practices.

I am aware of the national agreements and international conventions that guide the NSW commitment to marine parks to which you refer. I am also aware of numerous other State, national and international commitments relevant to this issue. These were reviewed in detail in my March 2009 critique of the "Torn Blue Fringe" commissioned by the then NSW Minister for Primary Industries through ACORF. Assessments of these commitments were the first three of eight primary issues considered in that report. The report was published by the NSW Government after peer review commissioned by ACORF, including by the NSW Department of Primary Industry's Chief Scientist, Dr Steve Kennelly and Professor Colin Buxton, a member of your Independent Review Panel. It is significant that the conclusion by the DPI Chief Scientist on the way my report dealt with NSW commitments was "Prof Kearney's insights into the reality of the binding requirements of state and national

governments with respect to the establishment of marine parks is particularly illuminating and should be absorbed by the appropriate management authorities". Professor Buxton similarly provides endorsement of my assessment of the binding requirements.

In summary my position on the NSW Government's requirement is that Government processes for conserving biodiversity, including the system of marine parks, must be based on clear identification of the threats to biodiversity and ecosystems and on management action that is cost-effective and not disproportionate to the magnitude of the threat. This is not only the obvious conclusion from the many relevant documents it is the logical process on which to base cost-effective protection. To the surprise of many marine park advocates, apparently including the Marine Parks Authority, the State's commitments do not include a requirement to restrict any form of fishing in any area, unless that form of fishing has been specifically identified as a threat in that area. To date many threats to NSW biodiversity have been identified but no specific threat from any form of fishing currently carried out in NSW has been described in the NSW marine parks process. Yet the dominant management measures specifically identified and enacted are closures of 'sanctuary zones' to all forms of fishing and fishing restrictions in many other areas to at least some forms of commercial and recreational fishing. What role, if any, the NSW system of marine parks has in cost-effectively managing all other threats has not been described. Furthermore, the failure to correctly align management actions with threats to specific areas or habitat types, together with the unjustified assumption that all fishing is a threat, has resulted in many areas being subjected to blanket fishing closures which represent completely inappropriate and inadequate management. This is particularly obvious on ocean beaches and in estuaries but applies in most areas. All areas closed to fishing have been incorrectly proclaimed as 'protected', thus falsely projecting the benefits of marine parks.

It is apparent that to date what science has been used in the NSW marine parks process has been grossly disproportionately directed at describing what biodiversity is within the parks, under the CAR principles, rather than providing the science necessary to underpin the protection of that biodiversity. The proper identification of the real threats to individual components of biodiversity in the areas in which they occur, and assessment of appropriate, adequate and cost-effective management, are missing.

It is of no surprise that, as you state, "refuge" zones have been "recognised within the fisheries management strategies adopted for every major commercial fishing activity in NSW". Areas have been closed to fishing as a result of the marine parks process and this is obvious and easily recognised. It would be overtly negligent not to take such closures into account in fisheries management plans. This is particularly so when such closures had already been declared under alternative legislation and there is no authority to reverse them under fisheries legislation. The issue that should be recognised, however, is that absolutely no evidence is given that these "refuge" zones represent an appropriate or adequate management measure for any of the problems facing the management of NSW fisheries. It is extremely unlikely that blanket bans on all types of fishing will ever represent appropriate fisheries management in any of the areas of NSW in which they have been enacted, let alone on ocean beaches and in

estuaries. But they do clearly represent another layer of Government involvement and cost in fisheries management.

Your invitation for me to contribute to the review of the zoning plan for the Batemans Marine Park in 2012 does nothing for my confidence that any notice will be taken of any contribution I may make to that review. The history of what has happened to my numerous earlier submissions is relevant.

On October 15, 2006 I made a submission on the original "Draft Zoning Plan" for the Batemans Park. That submission identified many of the problems with the process for declaring the Park and the zoning arrangements within it. Many of the concerns I expressed are the same ones that remain today. My submission also included identification of numerous specific problems with the "Science Paper". I have been advised that after receipt of my submission a senior representative of the Marine Parks Authority actually contacted the most senior scientists of the then NSW DPI seeking help to counter the concerns I had expressed. I am told those DPI scientists supported every one of my concerns to the extent that they acknowledged that my submission was superior to their own in that it identified several major flaws additional to those they had detected. In spite of this endorsement of my concerns by the most appropriate Government scientists as far as I can ascertain no action whatsoever was taken in the "Draft Zoning Plan" process as a result of my submission. Nor were the abuses of science in the "Science Paper" corrected at that time. (It was not until after I had made public my concerns a year later that the "unfortunate errors" to which you refer were edited from that document). I did not even receive acknowledgement of receipt of my submission.

On May 29, 2008 Professors Chapman and Underwood, Dr Lincoln Smith and I made a joint submission to the Solitary Islands Marine Park- Zoning Plan Review which included the following statement; "Even in combinations the documents provided to support the review do not contain sufficient well-documented data or appropriately peer reviewed assessments of the impacts from the current zoning arrangements to enable considered scientific evaluation of the zoning arrangements". We provided very positive suggestions on what was necessary to rectify this unacceptable situation. We received acknowledgement of receipt of our submission but again there is no evidence that any notice was taken of it. To the contrary, the "Solitary Islands Marine Park: zoning plan review report" (2009) that I received a copy of almost two years later provides absolutely no scientific data to enable assessment of the performance of that Park. Yet, in spite of the complete lack of scientific evidence, on April 19 of this year your Minister announced that "the next stage of the Solitary Islands Marine Park Zoning Plan review" included proposals for sanctuary zones to be increased by 66% and the park to be completely closed to prawn trawling.

Several of my numerous letters of the last three years to the Premier and senior public servants detailing my concerns with the marine parks process in this State resulted in notification that they had been directed to your Minister for a response. No response to any of them has been received.

My lack of assurance from you invitation to contribute to a 2012 review is exacerbated when your letter actually confirms that your Department does not respond adequately to concerns even when those concerns are supported by your own

Independent Review Panel and you are specifically requested to address them. Based on the outcomes of my past efforts, documented above, it appears that my future presentations would be more gainfully directed at public exposure of my concerns rather than submissions, no matter how well researched and documented, to your internal processes.

Yours sincerely

R. Kearney.

Robert Kearney
Emeritus Professor of Fisheries

cc: The Hon Robert Brown MLC
Chairman, Select Committee on Recreational Fishing