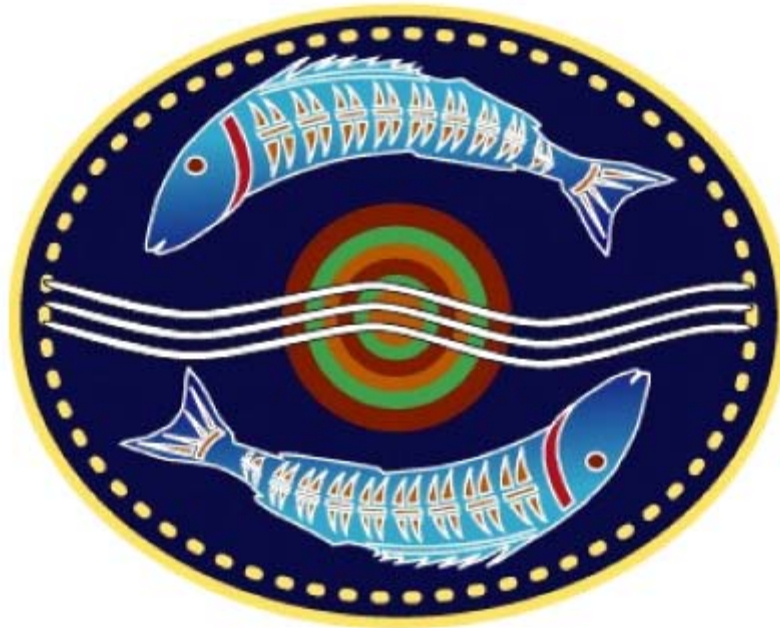


**Draft Report to the Minister for Agriculture, Forestry and Fisheries by the Hon.  
E. M. Franklyn QC, Chairman of the Aboriginal Fishing Strategy Working Group**

## **ABORIGINAL FISHING STRATEGY**



**“Recognising the past, fishing for the future”**

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FISHERIES MANAGEMENT PAPER NO. 168

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**Department of Fisheries  
Aboriginal and Torres Strait Islander Commission  
Fisheries Research and Development Corporation  
Department of Indigenous Affairs**

May 2003

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Aboriginal Fishing Strategy: "Recognising the past, fishing for the future"  
Draft Report to the Minister for Agriculture, Forestry and Fisheries  
By the Hon E. M. Franklyn QC,  
Chairman of the Aboriginal Fishing Strategy Working Group

May 2003

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## **MESSAGE FROM THE MINISTER**

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The draft Aboriginal Fishing Strategy report is a comprehensive effort to recognise the interests of Aboriginal people in the protection and use of fish resources in Western Australia. It is perhaps the most comprehensive report of its kind in Australia.

As this Government moves toward a more integrated approach to the management of fish resources this report is timely, and represents an opportunity to ensure Aboriginal fishing interests are given appropriate recognition in a more holistic approach to ensuring fish stocks are sustained for future generations.

The recommendations of the draft Aboriginal Fishing Strategy are those of the Hon E.M. Franklyn QC, Chairman of the Aboriginal Fishing Strategy Working Group. Prior to Government committing or otherwise to the range of strategies put forward in the report, it is important to obtain and consider the views of the Western Australian community. I have approved a three-month public consultation process for this to occur.

The report raises several important issues for Government, including funding. Many of the recommendations, if implemented, would require a significant commitment of resources and may take several years to fully implement. To this extent I will, during the public consultation period, also seek advice from a range of State and Commonwealth Government organisations with a view to developing an implementation strategy, including priorities and resource requirements.

Generally, and in line with this Government's commitment to build a new and just relationship with the Aboriginal people of Western Australia, I will be seeking to improve the recognition and inclusion of Indigenous Western Australians' fishing interests within fisheries legislation. I also intend to improve engagement with the variety of Aboriginal interests throughout the State in the development of future fisheries management arrangements.

I encourage you to provide comments on this draft Aboriginal Fishing Strategy.



**Kim Chance MLC**  
**MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES**

## **MAKING A SUBMISSION**

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The release of this report provides an opportunity to contribute your ideas and views on how Aboriginal fishing should be recognised and included in the management of fish resources in Western Australia.

Many Aboriginal people from Esperance to Kalumburu have contributed to the development of this report. To ensure Aboriginal people, particularly those in remote areas, have the opportunity for input on each of the recommendations in the report, meetings will be held in Aboriginal communities and regional centres between May and July 2003. The views and ideas expressed at these meetings will be passed on to the Working Group for its consideration.

Submissions are welcome from anyone who wishes to contribute until **29 August 2003** and should be addressed to:

Aboriginal Fishing Strategy Working Group  
Locked Bag 39  
Cloisters Square Post Office  
PERTH WA 6850

Submissions can also be made electronically on the Department's website at: [www.fish.wa.gov.au](http://www.fish.wa.gov.au), or by e-mailing them to: [aboriginalfishing@fish.wa.gov.au](mailto:aboriginalfishing@fish.wa.gov.au)

When making a submission, please reference the particular recommendation or section of the report you wish to comment on. If you disagree with a position, please suggest alternate ways to resolve or overcome the issues identified in the report. Clear reasons should be included in your response so your views can be properly considered.

Further copies of the report are available from the Department of Fisheries or on its website. If you require any further information please contact the Department of Fisheries on (08) 9482 7333.

## FOREWORD

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Despite the development of many reports about indigenous fishing issues in the past, there seems to have been few significant outcomes for Aboriginal people.

For this Aboriginal Fishing Strategy to achieve real outcomes, proposals and strategies relating to Aboriginal fishing have been developed with two key issues in mind. The strategies must be based on the issues and aspirations voiced by Aboriginal people during consultation, and they must be able to be implemented within the political, economic and social structure that exists in Western Australia, an essential part of which is a sustainable fisheries management framework.

To the extent that strategies can be implemented, the options contained in this discussion paper will not in all cases fully recognise the aspirations that Aboriginal people raised in consultation. However, they are a first step to provide for a number of real outcomes suited to meet the needs in this State for sustainable fishing practices and recognition of Aboriginal people's use of fish resources.

This report was developed with input from members of the Aboriginal Fishing Strategy Working Group, consisting of Aboriginal, fishing sector (commercial and recreational), conservation and Government representatives. As a result of the varied interest groups and their legitimate concerns about the impact of the strategy, it was not possible to achieve consensus on every recommendation.

The paper should not be interpreted as expressing the common views of all members of the Working Group. However, the advice and assistance in deliberations provided by each of the different sectors greatly assisted its development and enabled identification of issues which has resulted in what I believe is a holistic, integrated approach to solutions. I acknowledge the personal input of each member of the Working Group and particularly the assistance of the Working Group's Executive Officer.

I believe the outcomes of this report will assist government to meet the growing acknowledgement of indigenous fishing rights and responsibilities more pro-actively than anywhere else in Australia. If accepted and implemented, I believe these strategies will also help Government meet the rising expectations and the actions of indigenous Australians as they involve themselves more in the development of fisheries industries and issues surrounding fisheries resource planning, management and assessment.

I encourage all Western Australians to provide comment on these draft proposals.



**The Hon E.M. Franklyn Q.C.**  
**Chairperson, Aboriginal Fishing Strategy Working Group**





## **SUMMARY OF RECOMMENDATIONS**

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### **Customary Fishing**

**Recommendation 1:** (p. 31) Customary fishing applies to persons who are of Aboriginal descent and who are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs. Establishing who can fish in accordance with Aboriginal tradition in specific areas is the responsibility of the Aboriginal community and Government should not play a role in legislating or enforcing this practice.

**Recommendation 2:** (p. 31) Customary fishing encompasses the elements of barter or exchange of fish as long as it occurs within or between Aboriginal communities, is for other food or for non-edible items other than money, and if the exchange is of a limited and non-commercial nature.

**Recommendation 3:** (p. 32) Customary fishing is not limited to 'traditional' fishing gear, species or methods, but any fishing gear or methods of fishing that are destructive or threaten sustainability (whether traditional or contemporary) and the take of threatened species must be subject to management to ensure sustainable fishing practices.

**Recommendation 4:** (p. 35) Customary fishing (as defined in this document) be articulated and clearly separated from other forms of fishing in fisheries legislation and policy to allow for the development of appropriate management arrangements that reflect customary fishing rights, practices and sustainability requirements. This should include an amendment to the current definition of recreational fishing in the *Fish Resources Management Act 1994* to create a separate reference to customary fishing and provide for the latter as a separate class of fishing activity.

**Recommendation 5:** (p. 38) Customary fishing be recognised and managed as a positive, existing right and not a right to be conditionally granted, whereby all persons who are of Aboriginal decent and are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs are assumed to be entitled to fish in a customary manner.

**Recommendation 6:** (p. 39) Persons claiming customary fishing rights who do not appear to a Fisheries officer to be of Aboriginal descent should be required to provide contact details of an Aboriginal community organisation that can vouch for his or her claim, without being limited to providing that information. Persons who provide information that is false or insufficient for the claim of Aboriginal descent will be investigated and should be required to prove within the judicial system that customary fishing as defined in this document applies to them.

**Recommendation 7:** (p. 43) Sustainable customary fishing parameters are required to protect, and promote responsible use of, fish resources. These parameters should be applied on a regional basis as described in Map 1 and below as:

**Aboriginal Fishing Area 1:** Area of water that is generally adjacent to land on which access can be controlled by Aboriginal interests, adjacent to isolated Aboriginal communities, in which relatively low fishing pressure exists and within State waters jurisdiction [three nautical miles]; and

**Aboriginal Fishing Area 2:** The remainder of waters within the State's jurisdiction [including all waters within a 25 km radius of towns in Aboriginal Fishing Area 1].

**Recommendation 8:** (p. 44) Customary fishing parameters should be established within the following recommended framework:

<b>Provision for the Minister to regulate any customary fishing activities that threaten sustainability or are inconsistent with Aboriginal tradition as he or she thinks fit. Any proposals to change customary fishing parameters to be undertaken only after consultation with Aboriginal interests.</b>		
<b>Management measures</b>	<b>Application to Aboriginal people</b>	<b>Justification</b>
<b>Bag and possession limits</b>	<p>Bag limits should not apply, however, possession limits should be set to allow enough catch for customary requirements while preventing overly large or 'commercial' quantities of fish being legally taken, particularly fish at risk of overfishing.</p> <p>Possession limits should be set according to levels of risk of over-exploitation of species. A suggested option is set out in Table 1, which allows each customary fisher to take, for example, seven of the fish in category 1, plus 16 of the fish in category 2, plus 40 of the fish in category 3, plus the possession limit for crabs and shellfish.</p> <p>Recreational bag limits apply to customary fishing outside Aboriginal Fishing Area 1 for species covered specifically by recreational fishing licences (marron, rock lobster, abalone, and trout); or when efficient methods including a set net, a vessel greater than five metres in length or SCUBA is used.</p>	<p>Although it is thought that most customary fishing results in the take of fish well within the existing recreational bag limits, there are occasions when customary fishers must meet customary obligations such as supplying enough fish for community members during times of mourning, or 'sorry time'. In such circumstances recreational bag limits may not be consistent with customary requirements.</p> <p>Given the low number of people engaging in customary fishing in the State, it is not anticipated the waiving of bag limits is a significant threat to sustainability. However, limits that prevent overly large or commercial quantities of fish from being legally taken should apply according to the risks associated to certain species from overfishing. These limits should allow an appropriate take of fish to meet customary needs, but limit take of fish which are under greater threat from over-fishing and permit more of the fish that are less vulnerable to over-fishing.</p> <p>Fish have been categorised according to risk of over-fishing in the reviews of recreational fishing in the Gascoyne and West Coast, recently approved by the Minister for Fisheries. These categories are reflected in Table 1. Individual species limits should not apply within these categories as they do for recreational fishers. Possession limits should also apply for crustaceans, cephalopods and shellfish not subject to recreational fishing licences.</p> <p>Recreational and commercial fishers must pay for higher management costs of licensed fisheries through commercial and recreational fishing licence fees. Fishing pressure on these species is high, the value of these fish is very high, incentive for black market sales of these species and related education and enforcement requirements is high and more intensive management is required to prevent overfishing.</p> <p>Using a set net, a vessel greater than five metres in length or SCUBA greatly increases efficiency and ability to regularly take large quantities of fish, which if permitted in areas where fish stocks are already heavily utilised may contribute significantly to overfishing. These restrictions do not apply in Aboriginal Fishing Area 1.</p>

<p><b>Special bag or possession limits</b></p>	<p>Special limits or conservation rules should apply in State waters (e.g. barramundi and Shark Bay snapper) and should be considered for Aboriginal Fishing Area 1 (e.g. barramundi) to protect those species from over-fishing.</p>	<p>Some species such as pink snapper (in Shark Bay) and barramundi are under threat and require more intensive management to ensure sustainability. The application of special bag / possession limits should be less restrictive in Aboriginal Fishing Area 1 where fish stocks are under less fishing pressure. For example, barramundi is generally more abundant and recognised as a culturally important species in Aboriginal Fishing Area 1; therefore a larger special possession limit should apply as compared to State waters (see Table 1).</p>
<p><b>Size limits</b></p>	<p>Apply in Aboriginal Fishing Area 2, but do not apply in Aboriginal Fishing Area 1. A strong education program is recommended to raise awareness and promote benefits of size limits for long-term outcomes. Size limits for fish are listed in Table 1.</p>	<p>It is important to protect fish until they are mature enough to reproduce. Size limits are set according to biological attributes of fish and are a very effective fisheries management tool to ensure sustainability. Common fishing practice by Aboriginal people includes returning small fish to the water.</p> <p>In Aboriginal Fishing Area 1, fish are generally under less threat from overfishing. It is not anticipated the application of size limits will have a significant impact on sustainability of fish stocks or on fishing practices in these areas, where small fish will be taken for food if large fish are not available.</p> <p>A strong education program is anticipated to be a more effective long-term strategy in Aboriginal Fishing Area 1. Many species commonly caught by Aboriginal people do not have size limits and will not affect customary fishing in any event.</p>
<p><b>Seasonal closures</b></p>	<p>Apply when based on important stages of fish life cycles and for licensed recreational fisheries (rock lobster, marron, abalone and trout).</p>	<p>Seasonal closures are generally based on protecting fish during breeding times and other important stages in their life cycle. Licensed fisheries are highly valued, cost recreational and commercial fishers to participate in the fisheries and are highly exploited, requiring more intensive management. There are currently no relevant seasonal closures in Aboriginal Fishing Area 1.</p>
<p><b>Closed areas</b></p>	<p>Apply when based on important stages of fish life cycles and areas of ecological conservation such as sanctuary zones or reef observation areas.</p> <p>Netting closures at the time of publication of this report to apply with consideration given at a later date as to Aboriginal Fishing Area 1.</p>	<p>Closed areas that are based on protecting fish at important stages of life cycles such as nursery areas, breeding or spawning grounds or fish habitat must apply to ensure protection of fish and important fish habitat.</p> <p>Netting closures at the time of publication of this report should apply as they have generally been put in place to protect fish nursery areas or areas subject to overfishing. Proposals to close any new areas to netting should not automatically apply to customary fishing.</p>

<p><b>Fishing gear and method restrictions</b></p>	<p>Apply. In Aboriginal Fishing Area 1 traditional fishing methods including spears, fish traps and poisons should be permitted for the purpose of maintaining knowledge.</p> <p>In State waters, these methods, because they can be highly effective, should be given consideration on a case-by-case basis.</p>	<p>Current fishing gear and method restrictions should apply because they generally prevent very efficient or destructive means of fishing such as explosives, set nets and chemical poisons. However, there are several forms of fishing methods traditionally used, including fish traps, spears and plant-derived poisons that should be permitted in Aboriginal Fishing Area 1.</p> <p>In State waters, consideration should be given to the use of such traditional methods on a case-by-case basis, particularly when utilised for educational purposes, or to pass on cultural knowledge. The marking of unattended gear such as rock lobster pots should apply to ensure Fisheries officers do not have to remove unmarked gear from the water unnecessarily.</p>
<p><b>Protected species</b></p>	<p>Apply (excluding undersized fish in Aboriginal Fishing Area 1).</p>	<p>Protected species include berried female crabs and rock lobster with eggs, leafy sea dragons and cod over 1.2 metres in length. Vulnerable species are protected for sustainability reasons and therefore must apply.</p>
<p><b>Other</b></p>	<p>Consideration given to the application of recreational rules for fishing from some key popular recreational fishing areas, for example some jetties.</p> <p>Consideration also given to protecting some areas important to customary fishing against non-customary fishing activity.</p>	<p>This is to prevent possible conflict in places that are popular for recreational fishing.</p> <p>Discussed in later chapters.</p>

**Recommendation 9:** (p. 49) Pearling legislation pertaining to *Pinctada maxima* to include capacity for the Minister for Fisheries to allow for the customary use of that pearl oyster species.

**Recommendation 10:** (p. 49) Educational information promoting and raising awareness in the broader community about customary fishing rights, responsibilities, rules and practices must accompany changes to the management of customary fishing.

**Recommendation 11:** (p. 50) The importance of access to fishing areas by Aboriginal people be recognised by Government. The State should also endeavour to negotiate with tenure holders (including State departments or agencies) rights of access to waters for the purpose of customary fishing. Negotiations should include exemption for customary fishers from any fees to access for the purpose of customary fishing; national parks, pastoral stations or other areas open on a fee-paying basis.

## **Involvement in Fisheries Management**

**Recommendation 12:** (p. 56) Aboriginal people be recognised as a distinct fishing sector and as such be given the same level of engagement in fisheries consultative and management processes as the recreational and commercial fishing sectors.

**Recommendation 13:** (p. 60) Consultation between the Department of Fisheries and Aboriginal interests should be undertaken by utilising existing Aboriginal community and organisation networks. In addition, a dedicated position external to the Department of Fisheries should be funded to represent indigenous interests on fisheries management advisory committees and in other fisheries management processes.

**Recommendation 14:** (p. 63) In addition to recognising and engaging Aboriginal people as key fishing sector interests in all State waters, and with recognition that the Minister for Fisheries or the Minister's delegate will retain final decision making authority as required under statute, any decision pursuant to the *Fish Resources Management Act 1994* or *Pearling Act 1990* that may have a significant impact on Aboriginal interests in:

***Inland and intertidal waters in Aboriginal Fishing Area 1:*** should be made through joint management or cooperative decision-making processes between the Department of Fisheries and Aboriginal interests. Mechanisms for that cooperative decision making process must be developed in consultation with stakeholders.

***Waters from low water mark to three nautical miles (or State waters) in Aboriginal Fishing Area 1:*** should be made through specific consultation processes between the Department of Fisheries and Aboriginal interests. Mechanisms for that specific consultation process must be developed in consultation with stakeholders.

**Recommendation 15:** (p. 65) In relation to allocation processes, customary fishing is given priority over other fishing sectors, including commercial and recreational fishing.

**Recommendation 16:** (p. 66) A fixed allocation that meets all of the requirements of customary fishing should be prescribed in each fishery. This allocation should be based on the best available information and in consultation with Aboriginal interests. The fixed customary allocation should only be reduced where sustainability is threatened or it becomes a substantial component of the total available take in a fishery. The point at which fixed customary allocations are, or become, a 'substantial proportion' of the total available catch in a fishery will need to be determined by the Department of Fisheries based on the best available information and in consultation with customary fishing interests.

**Recommendation 17:** (p. 68) A survey of customary fishing that builds on the outcomes of the National Indigenous Fishing Survey (yet to be published) is recommended as a priority to provide information required for sound management, including the ability to address sustainability and allocation issues under an integrated fisheries management framework.

**Recommendation 18:** (p. 69) Policy guidelines relating to the use of existing legislative mechanisms to protect areas identified by the Minister for Fisheries as important for customary fishing should be developed for Aboriginal Fishing Area 1, and include assessment and implementation procedures.

**Recommendation 19:** (p. 69) Requirements relating to access to and protection of Aboriginal Reserves and sites pursuant to the *Aboriginal Affairs Planning Authority Act 1972* and *Aboriginal Heritage Act 1972* should be promoted among the fishing sector and Department of Fisheries. If there is an identified need to provide protection for particular Aboriginal sites or areas from impacts of fishing activities, the use of existing fisheries legislative and licensing mechanisms to limit or prevent legal access to particular areas by fishing sector interests should be considered.

**Recommendation 20:** (p. 70) Resources be identified and secured to assist Aboriginal interests develop Aboriginal marine resource use plans to be used among other things, as submissions to Government marine planning processes, including fisheries consultative programs.

**Recommendation 21:** (p. 72) The Department of Fisheries develop an Aboriginal employment policy that includes:

- Minimum employment targets that reflect the proportionate representation of Aboriginal people in the State population; and the proportionate representation of Aboriginal people in the population for each region as appropriate;
- Affirmative training and mentoring programs to encourage those individuals of Aboriginal descent who seek more senior positions within the Department to gain the capacity to do so; and
- An Indigenous Australian Recruitment and Career Development Strategy.

**Recommendation 22:** (p. 75) To provide opportunities to build capacity of Aboriginal people in natural resource management at the Department of Fisheries;

- Establish a Future Managers and Leaders program to enhance the ability for Aboriginal people to engage Government and industry in natural resource management, and increase employment opportunities;
- Pilot an Aboriginal Fisheries Warden program in the Kimberley region to assess its practical viability and benefits to Aboriginal people and fish resource management (options for joint funding, training and employment with organisations involved in natural resource management should be investigated); and
- Consider utilising the National Indigenous Cadetship Program.

**Recommendation 23:** (p. 77) An Aboriginal community relations program be established by the Department of Fisheries that considers the following possible components:

- The Volunteer Fisheries Liaison Officer (VFLO) program be promoted within Aboriginal communities and organisations to assist in gaining greater Aboriginal involvement in the program;
- An indigenous Western Australian person be identified as a spokesperson for the Department of Fisheries to deliver sustainable fishing messages;
- Where appropriate, fishing educational material such as signs include sustainable fishing messages from both traditional owners as customary stewards and the Department of Fisheries;
- Existing fisheries messages and information be targeted at Aboriginal interests;
- Existing schools programs developed by the Department of Fisheries be targeted at Aboriginal children and Aboriginal community schools; and
- Aboriginal Fisheries Wardens (if established) be utilised to assist in liaison between the Department of Fisheries and Aboriginal communities.

**Recommendation 24:** (p. 77) Cultural awareness training is made compulsory for all full time Fisheries officers and fisheries managers.

**Recommendation 25:** (p. 78) Joint or partnership fisheries research programs be identified, encouraged and developed in the fisheries research budget process, including identification of research needs resulting from Aboriginal fishing practices and ventures and whenever appropriate research programs explore opportunities for the exchange of information and incorporation of traditional knowledge.

**Recommendation 26:** (p. 79) An Aboriginal Fishing Program be developed in the Department of Fisheries to administer, coordinate and implement Aboriginal fishing initiatives. Government should resource this program, with additional funding assistance from external organisations, to enhance implementation of key initiatives and provide more effective services to Aboriginal clients.

**Recommendation 27:** (p. 79) In the case that native title as determined permits unsustainable fishing practices, the preferred action is consultation with native title interests to develop a workable solution. Failing this, consideration must be given to legislative procedures that prioritise the responsibility to protect fish above native title rights to take fish, and may lead to the payment of compensation to native title holders.

## **Economic Development**

**Recommendation 28:** (p. 86) A coordinated approach to the identification and provision of relevant existing business, training and funding support services be developed specifically for fishing related economic development opportunities for indigenous interests. The Department of Fisheries and Office of Aboriginal Economic Development should play a key role in this process.

**Recommendation 29:** (p. 87) In considering provision of support to localised small scale fishing ventures, the level of support given should reflect the potential for the venture to grow into economically profitable operations and potential social outcomes such as training and employment.

**Recommendation 30:** (p. 89) Any new allocation of commercial fishing authorisations to Aboriginal interests be administered through the open market process that has developed in Western Australia.

**Recommendation 31:** (p. 90) An Indigenous Fishing Fund (the Fund) be created by the State Government to assist in the purchase of tradeable fishing authorisations on the open market for the benefit of indigenous Western Australians.

**Recommendation 32:** (p. 90) the Western Australia Government should make Contributions to the Fund. The State should also seek contribution on a matching dollar for dollar basis from the Aboriginal and Torres Strait Islander Commission (ATSIC). In addition, opportunities for partnership funding with Indigenous Business Australia and the Commonwealth Government should be explored. At a national level, it is recommended that the State Government seek a review and amendment of the *Aboriginal and Torres Strait Islander Land Fund Act* to allow for the purchase of fishing related authorisations through the Aboriginal and Torres Strait Islander Land Fund.

**Recommendation 33:** (p. 91) To ensure inter-indigenous community equity in any allocation process for the Indigenous Fishing Fund, Government consider the structure and functions of both the Indigenous Land Corporation and Indigenous Business Australia in the development of administrative and allocation structures relating to that Fund.

**Recommendation 34:** (p. 91) Any Fund application process should be as simple as possible while ensuring accountability and transparency.



**Recommendation 35:** (p. 92) A loan/grant scheme be linked with the Fund to ensure those Aboriginal interests who are successful in running commercial fishing ventures through a lease arrangement from the Fund, and meet pre-determined performance criteria, have the opportunity to independently purchase licences through the loan/grant program.

**Recommendation 36:** (p. 93) A portion of the Fund be made available for purchasing operating equipment necessary to the function of the fishing operation that is not obtainable through other existing support services and that this portion of the Fund be considered on a loan basis to allow partial recovery of resources used.

**Recommendation 37:** (p. 95) Access by Aboriginal communities currently available under the Aboriginal community fishing licence policy be replaced as soon as possible with explicit allocations in Aboriginal Fishing Area 1. These explicit allocations should only be transferable amongst Aboriginal interests. Specific actions should include:

- An immediate review of the mud crab fishery with a view to reallocating all commercial mud crab access to Aboriginal interests; and
- The creation of a trochus fishery authorisation to secure access for historical participants in the fishery and formalisation of existing joint management arrangements.

**Recommendation 38:** (p. 97) Programs to develop aquaculture involving Aboriginal interests in Western Australia be consistent with *A National Aquaculture Development Strategy for Indigenous Communities in Australia* and emphasis be given to the provision of resources and support for Aboriginal aquaculture initiatives developed through collaborative approaches between Aboriginal interests and the Department of Fisheries.

**Recommendation 39:** (p. 98) In relation to the aquatic charter industry;

- The Indigenous Fishing Fund also be available to purchase transferable fishing charter authorisations for the benefit of Aboriginal interests;
- Agreements between Aboriginal interests and fishing charter operators that include employment options be promoted; and
- Ministerial Policy Guideline Number 12 - *Assessment of Applications for the Granting, Renewal or Transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences* be amended to include provision for the Executive Director of the Department of Fisheries to give consideration to Aboriginal interests applying for charter licences that can offer unique cultural fishing, education and heritage services as part of the operation arising from traditional / cultural links to the areas concerned.

## **SECTION 1 INTRODUCTION**

---

### **1.1. Background**

In 1993 the Commonwealth Resource Assessment Commission, as part of its Coastal Zone Inquiry, recommended the development of a National Aboriginal and Torres Strait Islander Strategy (ATSIFS). In 1997 a working group established by the Ministerial Council for Forestry, Fisheries and Aquaculture allocated \$400,000 to States and Territories to develop Aboriginal fishing initiatives consistent with outcomes of the Coastal Zone Inquiry.

Expanding on a pilot study initiated from ATSIFS program funding, the Department of Fisheries in Western Australia initiated a comprehensive Aboriginal Fishing Strategy (strategy) for the State with funding assistance from the Aboriginal and Torres Strait Islander Commission (ATSIC), the Fisheries Research and Development Corporation (FRDC) and the Department of Indigenous Affairs (WA).

A working group, chaired by the Hon. E.M. Franklyn QC, was established in 2000 to assist in the development of the Strategy and consultation with Aboriginal communities, organisations and individuals throughout the State. The working group is comprised of representatives of the following organisations:

- Aboriginal and Torres Strait Islander Commission (ATSIC);
- Commission of Elders;
- Conservation Council of WA
- Department of Fisheries;
- Department of Indigenous Affairs (DIA);
- Indigenous Land Corporation (ILC);
- Office of Aboriginal Economic Development (OAED);
- Recfishwest;
- Recreational Fishing Advisory Committee (RFAC);
- Western Australian Fishing Industry Council (WAFIC); and
- Western Australian Native Title Working Group (WANTWG).

Executive support is provided by the Department of Fisheries.

### **1.2. Objectives**

The objectives for the Aboriginal Fishing Strategy Working Group are to recommend to Government a strategy for:

- The inclusion of traditional and cultural fishing practices within a framework of planned sustainable use of fish and fish habitat; and

- Greater involvement of Aboriginal people in the fisheries sector, including commercial fishing, aquaculture, the aquatic charter industry, and fisheries management;

The strategy is consistent with the Department of Fisheries' statutory obligations to conserve, develop and share the fish resources of the State for the benefit of present and future generations.

### 1.3. Context

The strategy is being developed with recognition that:

- Sustainability of fisheries is of paramount importance and there is a growing need to protect and share fish resources for future generations.
- Native title determinations have, only to a limited extent to date, identified native title fishing rights.
- The strategy is a political process and outcomes must be consistent with the existing legal, social and political systems in Western Australia, but not directed to the exclusion of native title rights under the *Native Title Act 1993* (Commonwealth).
- There have been numerous reports initiated by state and federal governments relating to Aboriginal fishing which have involved the participation of Aboriginal people and which have, however, produced little in the way of real outcomes.
- The State Government has made a *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians*, released in October 2001. Fisheries legislation since 1905 has identified Aboriginal people as being generally exempt from various provisions of the legislation that applied to all others.
- Fish resources are used and valued differently in Western Australia by many different interests, including Aboriginal, conservation, recreational fishing, commercial fishing, aquaculture and aquatic charter.
- The term 'Aboriginal person' for the purpose of this report means any person who is of Aboriginal descent and who recognises him or herself as being Aboriginal, and is recognised as an Aboriginal person by the community.
- This strategy does not address management of turtles or dugongs. The strategy recognises "fish" in the same context as the *Fish Resources Management Act 1994* to mean "an aquatic organism of any species (whether alive or dead) and includes the eggs, spat, spawn, seeds, fry, larva or other source of reproduction or offspring of an aquatic organism; and a part only of an aquatic organism (including the shell or tail), but does not include aquatic mammals (e.g. dugongs), aquatic reptiles (eg turtles and crocodiles), aquatic birds or amphibians.

## **1.4. Need for the Strategy**

### **An agreement between Aboriginal people and the Government of Western Australia**

“There is a need for a new and just relationship between the Government of Western Australia and Aboriginal Western Australians.” (Government of Western Australia, 2002). This Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians, includes recognition of Aboriginal people’s continuing rights and responsibilities as the first people of Western Australia and that there is an enduring legacy of economic and social disadvantage that many Aboriginal people experience. A new and just relationship must inherently include improved recognition and inclusion of Aboriginal interests in the fisheries sector.

### **Lack of response to issues raised by Aboriginal people**

Aboriginal people have been raising the issue of recognition and the opportunity to be included in the fishing sector for decades without any significant action on the part of fisheries authorities. Their aspirations and issues relating to the use of fish resources are contained in numerous reports including the Royal Commission into Aboriginal Deaths in Custody, Rural Industries Strategy and the Resource Assessment Commission’s Coastal Zone Inquiry. The recommendations of these reports and others have been summarised at Appendix 1.

### **International responsibility**

The rights of indigenous people to be free to practice and enjoy their own culture is recognised under the *International Convention on Civil and Political Rights*. The *International Convention on Biological Diversity* also requires governments to protect and encourage the customary use of biological resources, in accordance with traditional cultural practices. (Offshore water rights discussion booklet, ATSIC, Feb 2002)

### **Native Title**

The *Native Title Act 1993 (Commonwealth)* recognises, as have recent High Court decisions, that fishing is an activity that may be the subject of a native title claim.

### **Fish resources successfully protected and managed in partnership with stakeholders.**

The current fisheries management framework and fisheries legislation has not been developed with appropriate Aboriginal interest consultation or involvement. As a result,

current fisheries legislation and management is inconsistent with Aboriginal fishing practices and does not necessarily influence the fishing behaviour of indigenous peoples. There is a need to identify and recognise Aboriginal fishing and develop appropriate management arrangements in partnership with Aboriginal people to ensure sustainability of fish stocks for future generations. Effective management arrangements and an understanding of the nature and extent of indigenous use of and participation in the management of fish resources are required before allocations can be managed under an integrated management framework, currently the subject of a report by the Integrated Fisheries Management Review Committee appointed by the State (see Fisheries Management Paper No. 165, November 2002).

## 1.5. Principles

The following key principles have been adopted in the development of this report.

- Sustainability and biodiversity objectives are paramount. The recognition of Aboriginal fishing rights and practices does not exceed the obligation to protect fish for future generations.
- Aboriginal people have continuing rights and responsibilities as the first people of Western Australia, including traditional ownership and connection to land and waters.
- Strategies must be consistent with the objects of the *Fish Resources Management Act 1994*, *Pearling Act 1990* and the *Native Title Act 1993*.
- Strategies must be consistent with a holistic, integrated approach to fisheries management and be accountable within an Ecologically Sustainable Development (ESD) reporting framework.
- Strategies must be practical and able to be implemented within the existing legal, political and social structures of Western Australia.

Governments and priorities change, as does the need for management arrangements for sustainable fishing. This report recommends that the principles adopted as a result of this strategy process remain in place unless, and until, changes are recommended by another full consultative review process.

## 1.6 Aboriginal Fishing Strategy and Native Title

Although native title determinations have not clearly defined the extent of native title fishing rights, the Croker Island decision handed down by the High Court of Australia in October 2001 provides some insight. The outcomes, as described in a recent National Native Title Tribunal brochure entitled *Fishing and native title: what rights apply?* include:

- Native title may exist over Australian marine waters, rivers, lakes and intertidal zones.
- Native title rights over marine waters related to fishing are not exclusive.

- The right to commercially fish, recreationally fish and public access through waters is not affected by native title.
- Current valid fishing licences and permits remain unchanged.
- The issue of any new fishing licence requires any registered native title claimant or registered native title body corporate (and others) to be notified of the proposal and given opportunity to comment on the proposal, but native title holders do not have the right of veto.

Further information on this decision is available online at [www.nntt.gov.au](http://www.nntt.gov.au) or from the National Native Title Tribunal.

It is essential to recognise that native title rights and interests possessed under the traditional laws acknowledged and the traditional customs observed by Aboriginal people may include fishing rights and interests (*Native Title Act 1993 (Commonwealth) s223*). The Aboriginal Fishing Strategy is not intended to diminish in any way native title, but aims to give practical effect where possible to its recognition and promote the aspirations of Aboriginal people of the State as identified by consultation with them. This can be achieved within the sustainable fisheries management frameworks that presently protect and share our State's valuable fish resources among all fish user groups.

Native title rights and interests as they relate to fishing may vary from one group to another, and as exercised in different geographical areas. This strategy, as an initial but substantial step, is directed primarily at establishing the legislative and policy frameworks required to recognise Aboriginal people in the management and use of fish resources on a State-wide basis. It is from these frameworks that practical outcomes for different native title groups with varied fishing practices, rights and interests can be derived. The full extent of native title rights and interests that exist in respect of any particular group can only be definitively ascertained by Native Title determination under the *Native Title Act 1993* or by agreement.

Many Aboriginal people, because they have been dispossessed of their traditional lands, are unable to assert native title rights and interests. The Aboriginal Fishing Strategy is not limited to recognising the rights and aspirations of native title holders, but attempts to recognise all Aboriginal people of Western Australia, traditional ownership and native title where appropriate.

If any recommendations (or legislation) contained within this report directed to giving practical effect to the recognition of Aboriginal fishing and native title fishing rights are, in the end, found to be inconsistent with the *Native Title Act 1993*, then such recommendations (or legislation) will be invalid to the extent of the inconsistency. It will then be a matter for the State to resolve any such issue by agreement between all interested parties or by the utilisation of the legislative provisions of the *Native Title Act 1993*.

This strategy is an important initial and practical step in an ongoing process to recognise Aboriginal people and native title in the protection and sharing of fish resources. Results

of native title determinations and social policies may alter the way in which native title holders and Aboriginal people are recognised in the protection and use of fisheries. However, the need to protect and use fish in a sustainable manner for the benefit of future generations will always remain of paramount importance. In today's world of limited fish resources, Aboriginal fishing activities must be consistent with the responsibilities that everyone has to protect and share fish for future generations.

## **1.7 Fisheries Resource Management in Western Australia**

The document in Appendix 2 sets out the key concepts and sectors that make up fisheries resource management in Western Australia that are important to keep in mind when reading this paper. It is a complex area and management arrangements are as diverse as the fish resource found in the productive and relatively unspoilt waters off our coast. Further information is available on the Department's website at [www.fish.wa.gov.au](http://www.fish.wa.gov.au) including a copy of the Department's *State of the Fisheries* report and *Annual Report*.

A brief overview of relevant current management arrangements is also provided at the beginning of each of the sections entitled *Customary Fishing*, *Involvement in Fisheries Management* and *Economic Development*.

## **1.8 Consultation Overview**

The Aboriginal Fishing Strategy Working Group assisted in the development of a consultation program designed to enable Aboriginal people to express the issues they have relating to fishing and put forward their aspirations and ideas for change.

Consultation was undertaken with Aboriginal individuals, organisations and communities throughout Western Australia from March 2001 to July 2002. During this process advice and assistance was sought and received from organisations including the Department of Indigenous Affairs, the Aboriginal and Torres Strait Islander Commission and land and sea councils. A summary of the consultation process is outlined in appendix 3.

Despite the differences in Aboriginal individuals, organisations and communities consulted along the State's 12,000 km coastline and inland waters, there is significant consistency in the views expressed by Aboriginal people in Western Australia. Of particular significance is the commonly expressed statement that Aboriginal tradition recognises the need to protect and maintain fish stocks relied on by them. These views are also consistent with numerous reports from around Australia (recommendations from a number of such reports are summarised at appendix 1) that have identified and compiled Aboriginal fishing issues as seen by indigenous people.

Successful management of fish resources must be undertaken in a holistic and integrated manner involving all interest and user groups. Opportunities for partnership approaches can be found by bringing fishing interests groups together. As such, recommendations of

this report consider and take into account issues and ideas from other stakeholder groups to ensure the best chance of successful outcomes.

In addition to allowing Aboriginal people to have direct input into the development of this report, the Department of Fisheries reported that the consultation process was a valuable learning experience and vehicle for greater understanding of Aboriginal fishing issues.

The outcomes from consultation throughout the State have been summarised into a number of key issues and aspirations. There was a general reluctance of many Aboriginal individuals to be quoted directly (traditionally, individuals can speak only for the country with which they are associated).

Detail about the issues and aspirations of Aboriginal people relating to fish are contained at the beginning of the three sections entitled 'Customary Fishing', 'Involvement in Management' and 'Economic Development'. However, Aboriginal fishing aspirations and issues commonly raised in consultations with Aboriginal interests across Western Australia may be summarised as:

- To be recognised by fisheries managers as more than just another stakeholder group and as having distinct and unique interests in fisheries including traditional ownership, traditional knowledge and customary stewardship responsibilities.
- To protect and maintain fish stocks from the effects of overfishing, pollution and habitat degradation.
- To have traditional knowledge recognised, respected and included within fisheries management and research.
- To have traditional fishing activities recognised.
- To have the importance of fish to Aboriginal people (including health, financial, educational, spiritual, cultural and ceremonial values) recognised by the broader community and fisheries managers.
- To be recognised and included in fisheries management through effective and appropriate consultation programs and representation within the Department of Fisheries.
- To have opportunities for involvement and employment in fisheries management, research, education and compliance programs.
- To not be subject to fishing rules inconsistent with customary practices so as to prevent Aboriginal people being penalised for exercising traditional fishing practices.
- To maintain and reclaim access to fish resources for food and other customary uses.
- To protect important cultural heritage places from fishing activities.
- To derive economic development and employment benefits from access to fishing authorisations.
- To have access to training, business planning and other resources that allow for Aboriginal interests to develop the necessary capacity to be competitive in the commercial fishing, aquatic tour and aquaculture industries.



## **SECTION 2      CUSTOMARY FISHING**

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*“Hunting, fishing and gathering are fundamental to our peoples contemporary and traditional cultures, help to define our identity, and are at the root of our relationship to the land. Hunting, fishing and gathering continue to provide a significant part of the diet of many of our people, and also provide a range of raw materials. As cultural activities hunting, gathering and fishing are important vehicles for education, and help demonstrate to our succeeding generations our understandings of our place in the world.”*

Extract from *Aboriginal and Torres Strait Islander Commission Environmental Policy (1994:5)*

### **2.1 Current Management Overview**

Customary fishing is not defined in, or specifically managed through, Western Australian fisheries legislation. The history of fisheries legislation in Western Australia as it has applied to Aboriginal people for the purpose of fishing in accordance with Aboriginal custom is summarised below.

As enacted in 1905, Section 43 of the *Fisheries Act 1905* did “not apply to fish obtained for food by the Aboriginal inhabitants of the State in their accustomed manner, otherwise than by means of any weir or hedge.”

The *Fisheries Act 1905* was later amended to state (in Section 56) that: “...a person of Aboriginal descent may take in any waters and by any means sufficient fish for food for himself and his family, but not for sale.” This was subject to restrictions relating to:

- Closed fisheries;
- The use of certain types of gear;
- The stalling of waters;
- Escape gaps in rock lobster pots;
- Possession of undersized fish; and
- The use of explosives or poisons to catch fish.

In addition, the Governor could impose any further restrictions if the power granted under the Act to Aboriginal people was being abused, or fish populations were being depleted.

Current legislation, the *Fish Resources Management Act 1994*, states that: “An Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.”

Subject to a contrary determination of native title rights, current fisheries legislation otherwise applies all fishing rules to Aboriginal people.

## **2.2 Consultation Outcomes**

### **2.2.1 Aboriginal People's Aspirations and Issues**

Consultation with Aboriginal individuals, communities and organisations throughout Western Australia resulted in the following key issues and aspirations that were consistently raised.

#### **2.2.1.1 How fish are valued**

- Fish are extremely important to most Aboriginal people as a food source, particularly in more remote areas and communities where alternative food supply is limited.
- Fish are caught to supplement the diet not only for health reasons but also for economic reasons as many Aboriginal people, particularly those in remote communities and regional areas, are on a very low income. Fishing restrictions can mean Aboriginal people have to buy fish or alternative food, affecting their economic situation.
- Fish and fishing are an important component of many cultural, ceremonial and social events. Cultural and social events involving fish can vary from entertaining visiting relatives to a cultural ban on eating red meat following a death in the family. During these times, the demand on fish and fishing becomes stronger. Some of what are viewed by Aboriginal people as cultural events have evolved since pre-colonisation and are not restricted to 'traditional' cultural events.
- Fish and fishing for many Aboriginal groups are important parts of the education process and passing on information to successive generations. Fish and fishing are vital tools for teaching and practising traditional ways. Some current fishing rules can prevent Aboriginal people from practising traditional fishing activities and passing on cultural knowledge. For example, fish traps, poisons and spears, which are acceptable in traditional fishing, are illegal in certain situations under fisheries legislation.
- Sharing of fish is important socially and communally. Catches of fish are shared among the family, extended family and others who are not able to fish for themselves, such as the elderly. Sharing often extends to barter and exchange of fish for other items and other food sources within Aboriginal communities.

### **2.2.1.2 Access**

- Access to fish by Aboriginal people is important for dietary and health reasons. Many Aboriginal groups expressed concern that the loss of access to fish is affecting Aboriginal people's health, as alternative food is less healthy.
- Access to fishing areas has been reduced, particularly in respect of national parks and pastoral properties and is a major concern to Aboriginal people.

### **2.2.1.3 Sustainability**

- Fish are not wasted. Catching more fish than required for immediate use is contrary to customary practices. Everything that is caught is used. In many cases everything is eaten except the bones. Many Aboriginal people are frustrated when they find fish carcasses left behind by recreational fishers with only fillets taken.
- Aboriginal people express concern about commercial and recreational overfishing and its impact on sustainability of fish stocks, and their ability to catch fish for customary purposes, particularly as customary fishing is generally restricted to fishing from shore, as many Aboriginal people cannot afford boats.

### **2.2.1.4 Fishing Rules**

- Customary fishing should apply to everyone who is of Aboriginal descent and recognised by the Aboriginal community as having the right to fish in a specific area, which may include Aboriginal people from other areas who are recognised by traditional owners. Cultural protocols relating to respect for traditional ownership and seeking permission to fish in certain areas continue to apply.
- Aboriginal people express an understanding of the need for fishing rules, but are frustrated as the current rules are designed to address recreational fishing issues and do not accommodate customary fishing practices or needs of Aboriginal people.
- Customary fishing should be given appropriate consideration before any new fishing rules are made.
- The principle of size limits (returning small fish) and protection of breeding fish is consistent with customary fishing practices.
- Many Aboriginal people are not aware of the current fishing rules and are unclear about their rights under fisheries legislation. Many believe the current fishing rules were designed for other people, that Aboriginal people were not consulted, and that the rules are not consistent with their needs. As a result, they continue to fish in a manner appropriate to their needs, regardless of fishing legislation.

- Many customary fishing rules are still observed, particularly in the north of the State. Customary fishing rules, such as fishing seasons, continue to exist. Those Aboriginal people who are aware of fishing rules generally acknowledge rules are required, but feel the current rules are not appropriate.
- Bag limits can restrict individuals or small groups of Aboriginal people from catching enough to feed their families, extended families, the elderly and for cultural events.
- Netting is important for many Aboriginal groups throughout the State on occasions when customary activities require larger numbers of fish (often mullet).
- Seasonal closures as legislated are not necessarily consistent with fishing seasons as practiced by Aboriginal people. Some seasonal closures (in particular, marron) restrict Aboriginal people from fishing when it is appropriate to satisfy educational, social and cultural fishing requirements.
- Aboriginal people can become caught between customary obligations and fisheries law. For example, a single person can be nominated by community elders to collect fish for a large ceremony, requiring more fish than is allowed by one person under the existing recreational fishing bag limit structure.

#### **2.2.1.5 Perception and Interaction**

- Although in the main Aboriginal people claimed they tend to fish in areas away from others, concern has been raised about the impact of different rules for customary fishing on public perceptions of Aboriginal people. There is a concern that without proper education of the broader community there may be a negative impact on Aboriginal people from changes in fishing rules that recognise customary fishing.
- Fisheries officers approaching Aboriginal people when fishing can cause concern for cultural reasons. Aboriginal people feel they should be free to fish without questions within their own traditional country. Aboriginal people feel they should be able to be left alone and not have to prove their rights to fish in a manner that is customary.

## 2.2.2 Examples of Issues Raised by Other Sectors

Western Australian Aboriginal Native Title Working Group submission to the Aboriginal Fishing Strategy, 2001

*“Consultations to date have built a strong appreciation of the practical role that fishing plays in the Aboriginal community as a supplement to the nutritional and health regimes of Aboriginal people, particularly the elderly. WAANTWG wishes to emphasise that the practical application of traditional fishing rights is inseparable from the important cultural and traditional fishing activities.”*

Recfishwest submission to the West Coast Recreational Fishing Working Group and the Aboriginal Fishing Strategy.

*“It is recognised that in the past members of the Aboriginal community have collected fish to provide food for their community, and there should be provision to allow this custom to continue in the future. In certain circumstances – such as Aboriginal ceremonies – members of the Aboriginal community should be allowed to collect fish for the whole community. Where these activities involve the possibility of exceeding the daily bag limit, such fishing should be carried only with prior written approval from the Department of Fisheries. In the interests of preserving fish stocks, no-one should be allowed to keep undersize fish, use illegal fishing gear or fish outside approved times or in waters closed to fishing.”*

Conservation Council of Western Australia - submission to the Aboriginal Fishing Strategy Working Group, 2001.

- *There is a need to define customary fishing and fishers.*
- *What is the traditional level of effort in customary fisheries?*
- *What is a sustainable level of effort for a customary fishery given current human population densities, settlement patterns, technologies, and so on?*
- *There is a need for more data on the effect of customary fishing on target species and the marine environment. Customary fishing may not be sustainable in its current context.*
- *What is the sustainable level customary fishing in an ecosystem subject to commercial and recreational fishing and other environmental pressures?*
- *There is a lack of understanding of Aboriginal people’s aspirations with respect to fish resources.*
- *There is uncertainty about the potential within Aboriginal communities to enforce customary fishing practices.*
- *There is a severe lack of information about customary fisheries on which to base resource allocation or fishery management plans.*

## 2.3 Options

### 2.3.1 Defining Customary Fishing

If customary fishing is to be recognised in fisheries legislation and policy, it must be defined.<sup>1</sup> The following definition has been developed consistent with outcomes of consultation and with the *Native Title Act 1993*.

#### Customary fishing:

**a. Applies to persons who are of Aboriginal descent; and**

Aboriginal descent is consistent with definitions of Aboriginal persons contained in the *Native Title Act 1993* (Section 253) and the *Aboriginal Affairs Planning Authority Act 1972* (Section 4).

**b. Who are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs; and**

Although Section 211 of the *Native Title Act 1993* is not directly relevant to customary fishing, it gives particular definition to the purpose of fishing for instances where certain native title rights and interests are to be preserved. This includes, “for the purpose of satisfying their personal, domestic or non-commercial communal needs.” Consultation also identified ceremonial and educational purposes with customary fishing. Ceremonial purposes may include the use of fish in a range of cultural events, and educational purposes relates to fishing as a means to pass knowledge, culture and other information on to future generations. Spiritual links of individuals to particular fish species from birth (totem species) were also identified as an important part of Aboriginal culture. However, this has not been included as a customary fishing purpose as individuals will typically not be permitted to take species to which they are spiritually linked.

**c. Who are accepted by the Aboriginal community in the area being fished as having a right to fish in accordance with Aboriginal tradition**

Expressed by many Aboriginal people throughout consultation was the position that customary fishing within a specific area applies to persons the Aboriginal community determines have the right to fish under traditional law and custom within that area. This includes cultural protocols relating to gaining permission to fish in particular areas. Aboriginal people have stated in consultation that the decision as to whom customary

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<sup>1</sup> Because the *Native Title Act 1993* overrides the *Fish Resources Management Act 1994* to the extent of any inconsistencies, the legal boundaries (and definition) of customary fishing by native title holders can only be established through native title processes. These boundaries have not yet been tested.

fishing applies is a cultural/customary issue that is currently addressed within the Aboriginal community, and should continue to be addressed in this manner. For this reason, and inherent difficulties relating to enforcement, the question of acceptance by the Aboriginal community to fish in a specific area is not incorporated into the legal definition of customary fishing.

**Recommendation 1:** Customary fishing applies to persons who are of Aboriginal descent and who are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs. Addressing who can fish in accordance with Aboriginal tradition in specific areas is the responsibility of the Aboriginal community and Government should not play a role in legislating or enforcing this practice.

Barter and exchange within Aboriginal communities was found to exist during consultation. Consistent with findings of the Commonwealth Law Reform Commission's report number 31, *The Recognition of Aboriginal Customary Laws*, it is recommended that customary fishing for the purpose of satisfying personal, domestic or non-commercial communal needs should recognise the elements of barter or exchange as long as it occurs within or between Aboriginal communities. However, trade, exchange or sale other than within or between Aboriginal communities should be regarded as a commercial activity and be subject to laws of general application.

The concept of barter is more specifically described in the *Alaska National Interest Lands Conservation Act (ANILCA)*. As used in this Act, the term 'barter' means the exchange of fish or wildlife or their parts, taken for subsistence uses-- (a) for other fish or game or their parts; or (b) for other food or for non-edible items other than money if the exchange is of a limited and non-commercial nature.

Recognition of Aboriginal people's role and aspirations in the commercial fishing (and related) industries is recognised and addressed later in the report.

**Recommendation 2:** Customary fishing encompasses the elements of barter or exchange of fish as long as it occurs within or between Aboriginal communities, is for other food or for non-edible items other than money, and if the exchange is of a limited and non-commercial nature.

### 2.3.1.1 Customary Fishing Methods

A commonly asked question about customary fishing is "does customary fishing mean that Aboriginal people can only use traditional fishing methods?"

Aboriginal culture is continually evolving and Aboriginal people are adapting to a rapidly changing world. For example, monofilament nylon nets are now used in place of traditional nets made from species of vine and other bush fibres. Because Aboriginal people are using fishing methods or gear that have been developed in the last 50 years does not necessarily mean that they are not fishing for a customary purpose.

Customary fishing is more concerned with the intent of the activity (as described in the definition of customary fishing), rather than methods. Outcomes of consultation clearly identified the intent of customary fishing as being consistent with, and/or based on, sustainability principles, reflective of customary responsibilities felt by Aboriginal people to protect and manage resources within traditionally owned areas of land and water.

Traditional fishing techniques such as the use of fish traps and poisons can be very effective in catching fish, even more so than modern fishing techniques such as SCUBA, monofilament nets or recreational fishing boats with fish-finding technology. Because a fishing method or gear is 'modern', it is not a reason to preclude that gear or method from an adaptive culture. However, the use of fishing methods or gear that are destructive or threaten sustainability of fish stocks, regardless of whether they are traditional or modern, is a sustainability issue that must be addressed through responsible management of fish resources.

Responsible management of fish resources will also necessitate the total protection of species that are considered threatened or endangered. The effect of that need is addressed later in this document. In addition, given that customary fishing is about the intent of the activity, there seems no reason to protect introduced or feral fish species from customary fishing on the basis that Aboriginal people have not historically targeted those species.

**Recommendation 3:** Customary fishing is not limited to 'traditional' fishing gear, species or methods, but any fishing gear or methods of fishing that are destructive or threaten sustainability (whether traditional or contemporary) and the take of threatened species must be subject to management to ensure sustainable fishing practices.

### ***2.3.2 Recognition of Customary Fishing in Fisheries Management***

Evident by its definition, customary fishing is different in purpose to other forms of fishing such as commercial and recreational. Concerns raised by Aboriginal people relating to customary fishing management primarily result from customary fishing being managed as, and not distinguished from, recreational fishing. A clear legislative and policy separation of customary fishing is required to address these issues and to develop appropriate management arrangements that reflect existing customary fishing rights and practices, and sustainability requirements.



### **2.3.2.1 Why recognise and manage customary fishing differently to other forms of fishing?**

Fishing by Aboriginal people has always been recognised in Western Australian fisheries legislation, separate to recreational fishing. The current recognition is limited to Aboriginal people being generally exempt from holding a recreational fishing licence if they are fishing in accordance with continuing Aboriginal tradition and if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.

The *Native Title Act 1993* (Commonwealth) acknowledges the right of Aboriginal people to fish in accordance with native title, which can include customary fishing. The *Native Title Act 1993* also overrides any inconsistent State fisheries legislation. This means that customary fishing that is undertaken in accordance with native title can be legally practised in some cases outside of current State fisheries legislation. Fishing is a claimed traditional right among many Aboriginal people in Western Australia.

The right of indigenous peoples to be free to practice and enjoy their own culture is recognised under the *International Convention on Civil and Political Rights*. The *International Convention on Biological Diversity* also requires governments to protect and encourage the customary use of biological resources, in accordance with traditional cultural practices.

The Government of Western Australia has made a commitment to Aboriginal people of Western Australia, entitled *A New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians*. This commitment recognises that Aboriginal people have continuing rights and responsibilities as the first peoples of Western Australia, including traditional ownership and connection to land and waters. These rights inherently incorporate the right of Aboriginal people to continue to fish in a manner customary to them.

Fisheries are managed successfully when they are managed in partnership with stakeholders to develop rules that have strong community support. Current fisheries management, designed to address recreational fishing issues, does not address customary fishing requirements. Fishing rules that do not recognise customary fishing needs are likely to result in a lack of credibility with Aboriginal interests and diminish Aboriginal community stewardship in respect to rules developed by fisheries authorities.

The intent of customary fishing is different to recreational or commercial fishing. The recreational fishing ethic is to “catch a feed for oneself and ones family, and for a variety of reasons enjoy the experience along the way”. Commercial fishing has economic objectives. Customary fishing is intrinsic to Aboriginal peoples’ identity and culture, is an important food source and is important to Aboriginal people for social, educational, ceremonial and spiritual reasons.

Continuing to manage customary fishing through rules designed for recreational fishing means that any future change to fisheries legislation to address recreational fishing issues will likely continue to be inconsistent with customary fishing. This may result in continued challenges and non-compliance with recreational fishing rules.

Native title holders are not necessarily subject to recreational fishing rules. It is hoped that native title fishing rights relating to customary fishing will be able to be incorporated into a sustainable fisheries management framework by recognising customary fishing.

### **2.3.2.2 Is there any risk of over exploitation by recognising customary fishing?**

Sustainability of fish stocks is paramount and customary fishing should only be recognised within sustainable fishing parameters.

Recognising customary fishing within fisheries management does not create a new form of fishing, but identifies an existing fishing practice and purpose. Aboriginal people consulted were generally very candid about the fact that they do not presently fish in accordance with the existing recreational fishing rules if those rules are inconsistent with customary fishing needs. The recognition of customary fishing will allow for the development of more appropriate management for the activity that protects customary fishing while maintaining sustainable levels of fishing.

Aboriginal people make up 3.2 per cent of the population in Western Australia, of which 40 per cent are under the age of 15 (Australian Bureau of Statistics, 2001 Census). Assuming that 50 per cent of Aboriginal people 15 years and older fish, customary fishing applies to less than one per cent of the State's population. As a comparison, an estimated 37 per cent of the State's population undertake recreational fishing (Department of Fisheries, State of the Fisheries Report, 2000/2001).

Consultation raised a number of points relating to stewardship responsibilities of Aboriginal people. These responsibilities appear to be linked to traditional ownership where there is a responsibility felt by Aboriginal people, particularly traditional owners, to protect fish and use fish only for what is needed. This customary stewardship role is maintained within the Aboriginal community and influences Aboriginal people's fishing behaviour, evidenced by issues consistently raised during consultation, which included:

- A strong objection to wasting fish, including only using fillets and not the whole fish, or taking more than required immediately;
- Expressed concern about impacts on fish by pollution and overfishing;
- Aspirations to be involved in the management of fish resources, and to play a role in assisting in the compliance with fishing rules;
- 'Playing' with fish (sport fishing), viewed as disrespectful to fish; and
- Customary fishing 'seasons' designed to rest fish from fishing pressure.

Separation of customary fishing from other forms of fishing requires legislation that defines the extent, nature, and application of customary fishing rights in order to protect those rights.

The current definition of recreational fishing in the *Fish Resources Management Act 1994* "...fishing for a purpose other than a commercial purpose" will require amendment to include reference to customary fishing, whilst not diminishing any existing rights of Aboriginal people to fish for a recreational purpose.

**Recommendation 4:** Customary fishing (as defined in this document) be articulated and clearly separated from other forms of fishing in fisheries legislation and policy to allow for the development of appropriate management arrangements that reflect customary fishing rights, practices and sustainability requirements. This should include an amendment to the current definition of recreational fishing in the *Fish Resources Management Act 1994* to create a separate reference to customary fishing and to provide for the latter as a separate class of fishing activity.

### **2.3.3. Application of Customary Fishing to Individuals**

#### **2.3.3.1 Options for Recognition**

Legislation that purports to define and protect customary fishing rights must be such that it can be practically administered and enforced. For example, unless Fisheries officers are able to determine to whom customary fishing applies, those rights can be claimed by anyone.

Several options are provided below which outline ways in which customary fishing may be enforced and protected against those who may attempt to falsely claim customary fishing rights for their benefit.

The key difference between each option is the point at which individuals claiming customary fishing should be required to provide proof that they have the right to fish in a customary manner. It is well understood from consultation that Aboriginal people do not wish to have to prove their customary fishing rights. A balance therefore must be found between ensuring those customary fishing rights can be protected and the level of imposition on those bona fide customary fishers.

Although Aboriginal people want to be "left alone" while fishing, Fisheries officers will often approach any person, even when he or she appears to be fishing within their rights. Fisheries officers do not only undertake law enforcement activities, but also approach people fishing to distribute educational material or to collect information for research projects that assist in the understanding of fisheries.

It is believed most customary fishing occurs within current recreational fishing limits and compliance relating to customary fishing is not required in these cases. In addition, experience shows that Fisheries officers quickly obtain a reasonable understanding as to who is a member of the Aboriginal community, particularly in regional areas. With stronger relationship between Department staff and Aboriginal people, this general recognition will increase further still. Therefore, it is anticipated the need for compliance relating to the difficulties of determining to whom customary fishing applies will be limited, but will occasionally be required.

The following options only apply to the extent that fishing is being undertaken in accordance with specified customary fishing rules, which will be discussed in following chapters. Any fishing outside customary fishing parameters should be illegal under fisheries legislation.

### ***Option 1: Positive Recognition***

This involves clearly and positively recognising that Aboriginal people have continuing customary fishing rights and responsibilities as the first people of Western Australia. Customary fishing should be recognised and managed as a positive, existing right and not a right to be conditionally granted. Such recognition will require legislative amendments to the *Fish Resources Management Act 1994*.

In practice, under this option legislation would operate in such a way that all persons who are of Aboriginal descent and are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs would be entitled to fish in a customary manner.

In practice, the only time a Fisheries officer would need to request a person claiming customary fishing rights to provide evidence of his or her their claim is when the person does not appear to be of Aboriginal descent. Mechanisms for addressing onus of proof, and processes for these circumstances are addressed in the next section entitled "Evidence".

The positive recognition model is the preferred option of the Working Group for the following reasons:

- It gives positive recognition to existing rights.
- It meets the objective of ensuring customary fishing is unable to be claimed by non-Aboriginal people.
- It does not require costly, inconvenient or impractical administrative systems.
- It acknowledges that the Aboriginal community continues to be responsible for determining who among the Aboriginal community is able to undertake customary fishing.
- It limits imposition on *bona fide* customary fishing.

### ***Option 2: Customary Fishing Register***

Under this option that was suggested during consultation, customary fishing would be administered through a register. This is not a preferred option.

The Aboriginal community would be responsible for nominating all those people who would be entitled to undertake customary fishing in accordance with the definition outlined in this report. This registration would only be required once in a lifetime for each individual and would be free.

This option would allow a registered person, who was fishing in addition to the recreational fishing rules but within customary fishing parameters, to easily prove to Fisheries officers that they are entitled to fish for customary purposes by providing their name and address. If a person is not registered they would be asked to apply to the register within a given time period and would only be prosecuted if they did not, or could not, register within the time given.

The practical use of a customary fishing register is an administrative mechanism that allows for minimum imposition on persons who meet the requirements of the customary fishing definition (and in particular would assist those who may not appear of Aboriginal descent).

The downfalls of this option include:

- The requirement on Aboriginal people to provide initial details for the register that they would see as an imposition on their rights.
- The additional administration and associated costs involved in a registration system.

### ***Option 3: Notification***

The West Coast regional review of recreational fishing stated that: *“Customary fishing has been formally recognised in New Zealand, where in certain specified circumstances such as traditional ceremonies, Maori are able to obtain a permit which allows them to exceed recreational bag limits and to collect fish for the whole community. At other times, Maori respect the general recreational bag limits.”*

Under a notification process, Aboriginal people wishing to undertake fishing within customary fishing guidelines would be required to provide notification (at a pre-determined venue) of their intention to fish for customary purposes and obtain a permit to do so. Notification would involve details of time, date and location for the proposed activity. Aboriginal people would be required to prove that they could meet the elements of the customary fishing definition, for example aboriginality and acceptance by the Aboriginal community, at the point of notification.

Based on the views expressed by Aboriginal people during consultation, it is unlikely in practice that Aboriginal people will notify anyone of their intention to fish in a manner

customary to them. It is also unclear whether one sector of the Aboriginal community - native title holders - would be required to hold a permit in exercising native title fishing rights.

Aboriginal people are not required to notify anyone of their intention to fish recreationally, or hold a recreational fishing licence. It would appear contradictory to require Aboriginal people to provide notification, or hold a licence, to undertake customary fishing.

This option is not preferred because it:

- Requires significant administration resources.
- Is unlikely to be adhered to, and would be inappropriate for many Aboriginal people, particularly in remote areas.
- Is inconsistent with the existing general exemption of Aboriginal people from the requirement to hold a recreational fishing licence under the *Fish Resources Management Act 1994*, and possibly also under section 211 of the *Native Title Act 1993*.

**Recommendation 5:** Customary fishing be recognised and managed as a positive, existing right and not a right to be conditionally granted, whereby all persons who are of Aboriginal descent and are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs are assumed to be entitled to fish in a customary manner.

#### 2.3.3.2. Evidence

For what are anticipated to be limited occasions when a Fisheries officer suspects, on reasonable grounds, that a person who is fishing in accordance with and claiming customary fishing rights is not of Aboriginal descent, the Fisheries officer should not proceed immediately with prosecution, but rather the following steps could apply:

1. The Fisheries officer would require the person to provide his or her name, principle place of residence and date of birth, as currently required under section 189 of the *Fish Resources Management Act 1994*.
2. The Fisheries officer should also be able to require such a person to provide information as to his or her aboriginality and contact details of an Aboriginal community organisation that can vouch for the person's claim. Without this requirement, it would become impractical for a Fisheries officer to protect customary fishing rights from any person who does not appear of Aboriginal descent, claims to be of Aboriginal descent and refuses to provide information to substantiate that claim.

3. If the claimant refuses to provide information as lawfully requested, or false information is given, prosecution should proceed. In this case, the onus of proof should be borne by the claimant. This is consistent with claims to commercial fishing rights, where the onus of proof is with the claimant.

Policy guidelines directing Fisheries officers as to their responsibilities and procedures in these instances should be developed to ensure clarity of procedure and transparency in the broader community as to the role of Fisheries officers in the protection of customary fishing rights.

The onus of proof should involve the claimant providing evidence that customary fishing, as defined in this document, applies to them. The claimant should provide evidence identifying him or herself as being of Aboriginal descent and an Aboriginal person. He or she should also provide verification by an Aboriginal community corporation that he or she are recognised as an Aboriginal person by the community. As an example, each applicant for an Aboriginal and Torres Strait Islander Commission (ATSIC) benefit must complete a statutory declaration declaring that they recognise themselves as an Aboriginal person and obtain verification (from an Aboriginal community corporation by signature under its common seal) that he or she is recognised by his or her community as a person who is of Aboriginal descent.

It is only for people trying to falsely claim customary fishing rights that the onus to establish proof is required and it is anticipated the process will rarely be necessary.

**Recommendation 6:** Persons claiming customary fishing rights who do not appear to a Fisheries officer to be of Aboriginal descent should be required to provide contact details of an Aboriginal community organisation that can vouch for his or her claim, without being limited to providing that information. Persons who provide information that is false or insufficient for the claim of Aboriginal descent to be investigated should be required to prove within the judicial system that customary fishing as defined in this document applies to them.

### ***2.3.4 Developing Parameters for Sustainable Customary Fishing***

Rules are required to ensure fish for future generations, and it is widely acknowledged that growing pressures on fish resources mean that protective measures are required. The rules also need to address and allow for the unique customary fishing rights and responsibilities of Aboriginal people.

### 2.3.4.1 Management Tools

There are a number of tools used to protect and manage the use of fish. Following is a brief description of some of the main management tools that will be considered in the development of customary fishing rules.

- **Bag limits** are set to reflect what is socially acceptable as a “fair day’s catch” for recreational anglers. They have the capacity to reduce the rate at which an aggregation of fish or an area is depleted by fishing, and also help to share the available catch.
- **Size limits** are usually based on the breeding biology of a species and are set to protect fish until they reach maturity and have been able to spawn at least once. Size limits apply equally to all fishers including commercial and recreational fishers. Maximum size limits are useful in protecting large breeding fish.
- **Closed seasons** are used generally for two reasons – to contain total fishing effort or to protect fish at important stages in their life cycle, such as spawning.
- **Closed areas** are also used to protect fish at important stages in their life cycle, to protect sedentary fish species or protect fish habitats from human use.

*(Both closed seasons and closed areas may limit all fishing, or limit only some types of fishing. Consequently they can be used as a means of resource sharing and reducing community conflict.)*

- **Gear and method restrictions** aim to prevent the use of highly destructive fishing methods such as poisons and explosives, and highly efficient commercial-type fishing gear. It also prevents the take of more fish than was intended.

### 2.3.4.2 Considerations When Developing Customary Fishing Parameters

In developing options for the management of customary fishing, consideration needs to be given to a range of biological, social, legal and political issues, including:

**Sustainability and protection of fish** - Sustainability and biodiversity principles are the paramount consideration in the development of any fisheries management strategies. The obligation to protect fish for future generations is more important than any individual’s right to fish. For example, restrictions on destructive or unsustainable fishing methods such as the use of explosives must apply to the taking of all fish to ensure fish for future generations.

**Reflect and acknowledge existing customary fishing practices** - Consultation has revealed that the current fishing rules do not always prevent Aboriginal people from fishing according to their customary needs. Any new rules designed to manage



customary fishing must be consistent with customary fishing practices to the point that they are sustainable. If any existing customary fishing practices are detrimental to sustainability of fish stocks, these should be addressed appropriately to ensure sustainability in consultation with Aboriginal people.

**Compliance accountability** - Without the ability to ensure individuals (Aboriginal and non-Aboriginal) are accountable in legislation to a sustainable fisheries management framework, the management and protection of fish resources become ineffective. This results in unsustainable fishing practices and an inability to protect existing fishing rights.

**Minimising social conflict** - Rules that create perceptions of social inequity have the potential to create division amongst the community and threaten reconciliation efforts. Education will play a key role in avoiding social conflict, however management arrangements can also be applied in ways that minimise the potential for conflict. For example, the equal application of rules in popular fishing areas or spatial separation of activities may minimise conflict.

**Community support and expectation** - Community expectations change over time. Community expectations about what is an appropriate amount of fish or fishing practice for particular situations has changed to reflect the growing need to protect fish stocks. Community support is important for the successful implementation of customary fishing options.

**Regional differences** - Although customary fishing is undertaken for the same reasons throughout the State, Aboriginal people in some areas are more reliant upon, and have greater influence over, the protection and use of fish resources than in other areas. These areas are reflective of the level of dependence upon, circumstance and use of fish resources by Aboriginal people in the area.

**Isolated Aboriginal Communities** - Aboriginal communities in isolated areas are generally more dependent upon fish resources for food as there are less alternative food sources in many cases. In addition, isolated communities provide less employment opportunities and fish supports low-income groups as a free food source. Fish resources in isolated areas can also provide one of the few opportunities for economic development in Aboriginal communities. There are about 198 Aboriginal communities in the Kimberley region. (Department of Indigenous Affairs, 2003).

**Distance from land** - The level of use of fish resources by Aboriginal people is seen as a function of distance from shore, broken into three categories. The categories are consistent with the jurisdictional boundaries of fisheries management, the level of use by Aboriginal people in each area, and boundaries commonly expressed in native title claims or framework agreements. They are:

- Intertidal and inland waters – consultation revealed Aboriginal people use these waters most frequently. Intertidal and inland waters include all coastal waters from low water mark to high water mark, estuaries, rivers, creeks and lakes.

- Coastal waters from low water mark to three nautical miles. Three nautical miles is the State jurisdiction to manage fish.
- Offshore waters – these waters are from three nautical miles (State jurisdiction boundary) to the 200 nautical mile exclusive economic zone and represent the waters least used by Aboriginal people. The State manages a majority of fisheries to the 200 nautical mile exclusive economic zone under a joint Commonwealth/State agreement.

**Relative population of Aboriginal people** - About 11,500 Aboriginal people live in the Kimberley region, almost 40 per cent of the regions population and almost one quarter of the total Aboriginal population in the State. (Department of Indigenous Affairs, 2003)

**The level of access as a function of tenure of the land adjacent to the water** - Land tenure has implications for fisheries access by land and therefore the management of fish resources. This is particularly important in the case of Aboriginal assigned land, where Aboriginal people have various levels of control over access to the water by land. This is evident in large areas of the Kimberley region where it is illegal to pass through, or come ashore on, Aboriginal reserve land without a permit.

**The level of utilisation of fish resources in the area** - In areas where fish stocks are generally fully exploited, the need to manage fisheries to meet sustainability objectives will reduce the flexibility in management to co-operatively meet the aspirations of Aboriginal people. Areas where there are less sustainability concerns and more fish resources to be shared allows for a greater ability to incorporate the aspirations of Aboriginal fishing interests in the management, use and protection of fish.

Based on these factors that affect the circumstances, roles and responsibilities of Aboriginal people in the protection and use of fish resources, it is recommended that management of indigenous fishing issues be on a broad regional approach, in which the State is divided into two areas, being:

***Aboriginal Fishing Area 1***

- Waters generally adjacent to Aboriginal assigned land (including determined native title claims that contain rights to control access).
- Within proximity to isolated Aboriginal communities; and
- Fish stocks that are not heavily utilised.

Within Aboriginal Fishing Area 1, a greater level of priority is acknowledged in inland and intertidal waters than in waters from low water mark to three nautical miles. Waters immediately adjacent (within a 25km radius) to townsites to be considered as State waters.

***Aboriginal Fishing Area 2***

- Waters generally adjacent to non-Aboriginal assigned land.
- Within proximity to towns and large population centres.

- All waters from three nautical miles (State jurisdiction) to the 200 nautical mile exclusive economic zone.
- Waters within which fish stocks are generally fully utilised.

These regions (as represented in Map 1, located at the end of this report) must be considered in the application of a management framework to customary fishing to ensure the most appropriate recognition of customary fishing uses and protection of fish.

**Recommendation 7:** Sustainable customary fishing parameters are required to protect, and promote responsible use of, fish resources. These parameters should be applied on a regional basis, where those regions are described in Map 1 and below as:

- **Aboriginal Fishing Area 1** (area of water that is: generally adjacent to land on which access can be controlled by Aboriginal interests; and adjacent to isolated Aboriginal communities; and in which relatively low fishing pressure exists; and within State waters jurisdiction [three nautical miles]).
- **Aboriginal Fishing Area 2** (the remainder of waters within the State's jurisdiction [including all waters within a 25 km radius of towns in Aboriginal Fishing Area 1]).

#### **2.3.4.3 Sustainable customary fishing framework**

Following is a recommended framework for the application of customary fishing parameters and justification for the options. Once established, these customary fishing rules should only be changed following appropriate consultation with Aboriginal interests and should not automatically be subject to changes imposed on other sectors.

**Recommendation 8: Customary fishing parameters should be established within the following recommended framework:**

<p><b>Provision for the Minister to regulate any customary fishing activities that threaten sustainability or are inconsistent with Aboriginal tradition as he or she thinks fit.</b>  <b>Any proposals to change customary fishing parameters to be undertaken only after consultation with Aboriginal interests.</b></p>		
Management measures	Application to Aboriginal people	Justification
<p><b>Bag and possession limits</b></p>	<p>Bag limits should not apply, however possession limits should be set to allow enough catch for customary requirements, but prevent overly large or ‘commercial’ quantities of fish being legally taken, particularly fish at risk of overfishing.</p> <p>Possession limits should be set according to levels of risk of over-exploitation of species. An example is set out in Table 1, which allows each customary fisher to take, for example, seven of the fish in category 1, plus 16 of the fish in category 2, plus 40 of the fish in category 3, plus the possession limit for crabs and shellfish.</p> <p>Recreational bag limits apply to customary fishing outside Aboriginal Fishing Area 1 for species covered specifically by recreational fishing licences (marron, rock lobster, abalone, and trout); or when efficient methods including a set net, a vessel greater than five metres in length or SCUBA is used.</p>	<p>Although it is thought that most customary fishing results in the take of fish well within the existing recreational bag limits, there are occasions when customary fishers must meet customary obligations such as supplying enough fish for community members during times of mourning, or ‘sorry time’. In such circumstances recreational bag limits may not be consistent with customary requirements.</p> <p>Given the low number of people engaging in customary fishing in the State, it is not anticipated the abolishment of bag limits is a significant threat to sustainability. However, limits that prevent overly large or commercial quantities of fish from being legally taken should apply according to the risks associated to certain species from overfishing. These limits should allow an appropriate take of fish to meet customary needs, but limit take of fish which are under greater threat from overfishing and permit more of the fish that are less vulnerable to overfishing.</p> <p>Fish have been categorised according to risk of overfishing in the reviews of recreational fishing in the Gascoyne and West Coast, recently approved by the Minister for Fisheries. These categories are reflected in Table 1. Individual species limits should not apply within these categories as they do for recreational fishers. Possession limits should also apply for crustaceans, cephalopods and shellfish not subject to recreational fishing licences.</p> <p>Recreational and commercial fishers must pay for higher management costs of licensed fisheries through commercial and recreational fishing licence fees. Fishing pressure on these species is high, value of these fish are very high, incentive for black market sales of these species and related education and enforcement requirements are high, and more intensive management is required to prevent overfishing.</p> <p>Using a set net, vessel greater than five metres in length or SCUBA greatly increases efficiency and ability to regularly take large quantities of fish, which if permitted in areas where fish stocks are already heavily utilised may contribute significantly to overfishing. These restrictions do not apply in Aboriginal Fishing Area 1.</p>

<p><b>Special bag or possession limits</b></p>	<p>Special limits or conservation rules should apply in State waters (e.g. barramundi and Shark Bay snapper) and should be considered for Aboriginal Fishing Area 1 (e.g. barramundi) to protect those species from over-fishing.</p>	<p>Some species such as pink snapper (in Shark Bay) and barramundi are under threat and require more intensive management to ensure sustainability. The application of special bag / possession limits should be less restrictive in Aboriginal Fishing Area 1, where fish stocks are under less fishing pressure. For example, barramundi is generally more abundant and recognised as a culturally important species in Aboriginal Fishing Area 1; therefore a larger special possession limit should apply as compared to State waters (see Table 1).</p>
<p><b>Size limits</b></p>	<p>Apply in Aboriginal Fishing Area 2, but do not apply in Aboriginal Fishing Area 1. A strong education program is recommended to raise awareness and promote benefits of size limits for long-term outcomes. Size limits for fish are listed in Table 1.</p>	<p>It is important to protect fish until they are mature enough to reproduce. Size limits are set according to biological attributes of fish and are a very effective fisheries management tool to ensure sustainability. Common fishing practice by Aboriginal people includes returning small fish to the water.</p> <p>In Aboriginal Fishing Area 1, fish are generally under less threat from overfishing. It is not anticipated the application of size limits will have a significant impact on sustainability of fish stocks or on fishing practices in these areas, where small fish will be taken for food if large fish are not available.</p> <p>A strong education program is anticipated to be a more effective long-term strategy in Aboriginal Fishing Area 1. Many species commonly caught by Aboriginal people do not have size limits and will not affect customary fishing in any event.</p>
<p><b>Seasonal closures</b></p>	<p>Apply when based on important stages of fish life cycles and for licensed recreational fisheries (rock lobster, marron, abalone and trout).</p>	<p>Seasonal closures are generally based on protecting fish during breeding times and other important stages in their life cycle. Licensed fisheries are highly valued, cost recreational and commercial fishers to participate in the fisheries and are highly exploited, requiring more intensive management. There are currently no relevant seasonal closures in Aboriginal Fishing Area 1.</p>
<p><b>Closed areas</b></p>	<p>Apply when based on important stages of fish life cycles and areas of ecological conservation such as sanctuary zones or reef observation areas.</p> <p>Netting closures at the time of publication of this report to apply with consideration given at a later date as to Aboriginal Fishing Area 1.</p>	<p>Closed areas that are based on protecting fish at important stages of life cycles such as nursery areas, breeding or spawning grounds or fish habitat must apply to ensure protection of fish and important fish habitat.</p> <p>Netting closures at the time of publication of this report should apply as they have generally been put in place to protect fish nursery areas or areas subject to overfishing. Proposals to close any new areas to netting should not automatically apply to customary fishing.</p>

<p><b>Fishing gear and method restrictions</b></p>	<p>Apply. In Aboriginal Fishing Area 1, traditional fishing methods including spears, fish traps and poisons should be permitted for the purpose of maintaining knowledge.</p> <p>In State waters, these methods, because they can be highly effective, should be given consideration on a case-by-case basis.</p>	<p>Current fishing gear and method restrictions should apply because they generally prevent very efficient or destructive means of fishing such as explosives, set nets and chemical poisons. However, there are several forms of fishing methods traditionally used, including fish traps, spears and plant-derived poisons that should be permitted in Aboriginal Fishing Area 1.</p> <p>In State waters, consideration should be given to the use of such traditional methods on a case-by-case basis, particularly when utilised for educational purposes, or to pass on cultural knowledge. The marking of unattended gear such as rock lobster pots should apply to ensure Fisheries officers do not have to remove unmarked gear from the water unnecessarily.</p>
<p><b>Protected species</b></p>	<p>Applies (excluding undersized fish in Aboriginal Fishing Area 1).</p>	<p>Protected species include berried female crabs and rock lobster with eggs, leafy sea dragons and cod over 1.2 metres in length. Vulnerable species are protected for sustainability reasons and therefore must apply.</p>
<p><b>Other</b></p>	<p>Consideration given to the application of recreational rules for fishing from some key, popular recreational fishing areas, for example some jetties.</p> <p>Consideration also given to protecting some areas important to customary fishing against non-customary fishing activity.</p>	<p>This is to prevent possible conflict in places that are popular for recreational fishing.</p> <p>Discussed in later chapters.</p>

**Table 1 Categories of Fish, Size Limits and Proposed Possession Limits for Customary Fishing**

<b>Category 1 Fish - Combined possession limit of seven</b>	<b>Minimum Size</b>
Blue groper	
Barracuda	
Baldchin groper / tuskfish / bluebone	400mm
Bone fish	
Cobbler	430mm
Cobia	
Cods	
Coral trout / coronation trout	450mm
Dhufish	500mm
Giant herring	
Golden / Giant Trevally	
Job fish	
Mackerel – Spanish, shark and Wahoo	900mm
Mangrove jack	
Mahi mahi	
Milk fish	
Mulloway	450mm
Nannygai / red snapper	230mm
Parrotfish	
Pearl Perch	
Pink snapper	410mm
Queen snapper	410mm
Red emperor	410mm
Salmon, Australian	300mm
Samson fish/Amberjack	
Sea Perch	
Shark	
Spangled emperor/blue lined emperor (black snapper)	280mm
Tuna	
Yellowtail kingfish	

<b>Category 2 Fish - Combined possession limit of 16</b>	<b>Minimum Size</b>
Bream - north-west black & yellow fin	250mm
Bonito	
Fingermark bream	
Flathead	250mm
Flounder	250mm
Goatfish	
Leatherjacket	250mm
Mackerel – school	500mm
Northwest snapper	280mm
Skippy / trevally	200mm
Snook/ pike	330mm
Tailor	250mm
Threadfin salmon	
Whiting - King George and Yellowfin	250mm

<b>Category 3 Fish - Combined possession limit of 40</b>	
Blue mackerel	
Dart	
Garfish	
Gurnard	
Herring	
Longtoms	
Mullet	
Tarwhine (silver bream)	
Whiting – sand, school	
All other species not listed	

<b>Special Possession Limits</b>	<b>Area</b>	<b>Possession limit</b>
Barramundi	Aboriginal Fishing Area 2	2 (550mm)
	Aboriginal Fishing Area 1	4
Pink Snapper	(Inner gulfs of Shark Bay only)	Recreational fishing rules apply

<b>Crustaceans, Shellfish and Cephalopods</b>	<b>Possession limit</b>	<b>Size limit</b>
Blue swimmer crabs	40	127mm
Mud Crabs	10	135mm
Prawns	18 litres	
Cockles and Pipsis	4 litres	
Razorfish	40	
Scallops	40	
Sea Urchins	40	
Mussels	18 litres	
Squid, cuttlefish and octopus combined	30	

<b>Licensed Recreational Fisheries</b>	<b>Recreational fishing rules apply.</b>
Rock lobster, marron, abalone, trout	

### **2.3.5 Customary Take Of Pearl Oyster**

The majority of pearl oysters are managed under the *Fish Resources Management Act 1994*, which allows for the customary take of pearl oysters covered under that Act (subject to bag and other conservation limits). However, the pearl oyster *Pinctada maxima* is managed under the *Pearling Act 1990*.

Management of this species is by quota allocations, with all quotas currently allocated to the commercial fishery. There is currently no provision in pearling legislation for the take of pearl shell by customary fishing. During consultation it was identified that pearl shell, including *Pinctada maxima*, is an important part of Aboriginal culture in the Kimberley region of the State. It is recommended that pearling legislation pertaining to



*Pinctada maxima* include capacity for the Minister for Fisheries to allow for the customary use of that species of pearl oyster.

**Recommendation 9:** Pearling legislation pertaining to *Pinctada maxima* to include capacity for the Minister for Fisheries to allow for the customary use of that pearl oyster species.

### **2.3.6 Promoting Awareness amongst the Broader Community**

Aboriginal groups have raised concern about the possible impact of separate rules for customary fishing and how they may impact on relations between Aboriginal and non-Aboriginal people. A community awareness program must accompany any changes to fisheries legislation and management relating to customary fishing to raise awareness within the broader community about Aboriginal customary fishing.

Most people are unaware of the existing rights and interests of Aboriginal people, values placed on fish and fishing by Aboriginal people and the reasons for ensuring Aboriginal people can continue to exercise their customary fishing practices. A clear and prolonged education process needs to be developed to ensure the general community is able to access relevant information that will assist it in making decisions about the incorporation of customary fishing into fisheries management programs, and be mindful of the potential issues that may arise from a lack of understanding of customary fishing rights and interests.

**Recommendation 10:** Educational information promoting and raising awareness in the broader community about customary fishing rights, responsibilities, rules and practices must accompany changes to the management of customary fishing.

### **2.3.7 Access**

Access to fishing areas historically used by Aboriginal people, have been eroded as a result of the granting of various land tenures, including lands vested in State agencies. An example includes access to the coast by Aboriginal people wishing to fish in a customary manner being restricted as a result of pastoral stations in the Pilbara. In addition, access is being reduced with the increasing imposition of fees to pass through, or camp on areas of land adjacent to waters where customary fishing has taken place.

Although it is not within the scope of Fisheries legislation to address such access issues, it is an issue of importance raised by Aboriginal people as it affects their ability to continue to fish for customary purposes.

**Recommendation 11:** The importance of access to fishing areas by Aboriginal people be recognised by the State Government and it endeavours to negotiate with tenure holders (including State departments or agencies) rights of access to waters for the purpose of customary fishing. Negotiations should include exemption for customary fishers from any fees to access for the purpose of customary fishing; national parks, pastoral stations or other areas open on a fee-paying basis.

## **SECTION 3 INVOLVEMENT IN FISHERIES MANAGEMENT**

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*"We are currently faced with a management model which allocates rights to use resources ... in a way which takes no heed of the particular relationship Aboriginal people have with their country, and all the living things within it. We are not just another 'user group' of a limited resource."*

(Peter Yu, Director of the Kimberley Land Council, from paper presented at the third Australasian Fisheries Management Conference, 1995)

### **3.1 Current Management Overview**

#### **3.1.1 Consultation**

Fishing sector groups, the community and other stakeholders are involved in fisheries management decisions through two main consultative methods, management or Ministerial Advisory Committees (MACs), established by the Minister for Fisheries to provide advice on relevant fishery issues, and public consultation programs.

The *Fish Resources Management Act 1994* makes provision in the membership of the Recreational Fishing Advisory Committee (RFAC) for a person of Aboriginal descent to be appointed by the Minister, who in their opinion represents the interests of Aboriginal people.

In addition, Aboriginal community representatives are encouraged to apply for membership on other MACs as applicable (e.g. Northern Demersal Scalefish Interim Managed Fishery MAC and each of the 12 Regional Recreational Fishing Advisory Committees).

Proposals for new management arrangements for recreational and commercial fishing, pearling, aquaculture and the aquatic charter industry are generally published for public comment prior to decisions being made. Every person and organisation has the opportunity to comment during a public consultation phase.

More specifically, Aboriginal or native title interests are recognised in a number of established consultation procedures. An example is Ministerial Policy Guideline No. 8. *'Assessment of applications for Aquaculture and Pearling in coastal waters of Western Australia'*.

### **3.1.2 Aboriginal Fisheries Officers**

The Department of Fisheries has had success in the training and employment of Aboriginal people as Fisheries officers through a regional Aboriginal trainee fisheries officer program. At the time of writing this report, the Department of Fisheries employed approximately 90 full time Fisheries officers, of which five were Aboriginal people.

## **3.2. Consultation Outcomes**

### **3.2.1 Aboriginal People's Aspirations and Issues**

Consultation with Aboriginal individuals, communities and organisations throughout Western Australia resulted in the following key, consistently raised, issues:

- Aboriginal people have expressed a strong interest in being recognised and involved in management of fishing in their local areas, consistent with their customary responsibility as “stewards” of natural resources. Traditional owners still practice their cultural obligation to look after the country, which includes the management of natural resources. Aboriginal people believe that as custodians they must be recognised and included in fisheries management not just as stakeholders, but also as having additional, unique rights and interests.
- Aboriginal people expressed a willingness to work with Government through a partnership approach to fisheries management that recognises customary marine tenure and customary stewardship responsibilities.
- Consultation and involvement in the decision making process by Aboriginal people should reflect traditional ownership rights and responsibilities.
- Aboriginal rights relating to the sustainable use of fish resources must be clarified.
- Aboriginal people require recognition that although they have been dispossessed of lands negatively affected by development and have had access to fish resources reduced, they have retained traditional knowledge and links to fish and fishing.
- Aboriginal people express great concern about the effects of pollution and overfishing as it has affected areas in which they have customary stewardship roles.
- Traditional owners in the Kimberley want resources to undertake marine planning processes for sea country so as to be strategic and proactive in providing their views to Government and fishing stakeholders, instead of reacting to the numerous requests by Government and industry interests for input on various applications and

issues. Aboriginal people are particularly concerned about the apparent lack of a strategic approach to assessing pearling leases and charter fishing operations.

- An Aboriginal fishing unit should be established within the Department of Fisheries to represent, address and implement Aboriginal fisheries issues, reflective of the need to recognise Aboriginal interests as a unique user group.
- Consultation needs to be improved and should utilise existing networks established by, for example ATSIC, Aboriginal community councils and organisations, Native title working groups and representative bodies and the Commission of Elders, but still requires meetings in person between Fisheries Department staff and affected Aboriginal interests in some cases.
- Aboriginal individuals cannot speak for other Aboriginal people's country outside of their own.
- There is a diverse range of Aboriginal interests, organisations and communities throughout the State. Even inter-generational differences are uniquely diverse. Aboriginal people cannot be considered as a homogenous sector for the purpose of managing fisheries.
- Information about fishing rules and fisheries management is not effectively targeted toward Aboriginal people.
- Aboriginal people would like to see more opportunities for Aboriginal people to be trained and employed by the Department of Fisheries as Aboriginal Fisheries Officers, Honorary Fisheries Officers and wardens.
- There is an identified need for cross-cultural training of Department of Fisheries staff, particularly Fisheries officers who are likely to have greater contact with Aboriginal people.
- Concerns relating to the effect of aquatic charter industry and commercial fishing operations on Aboriginal communities and cultural sites have been raised. Examples include the impact of Kimberley Prawn Fishery on the community in Napier Broome Bay as a result of by-catch washing up and fishing in particular areas, and aquatic charter operators taking tourists to culturally-sensitive areas and not obtaining permission required for access to Aboriginal reserve land.

In addition, native title claimants have raised a number of issues relating to their involvement and recognition in management of fish resources within their claim areas. For example, in comments to a Pearl Oyster Farm Lease application by Karajarri claimants prepared by the Kimberley Land Council 17 June 2002, the following aspirations and issues were raised:

*“Under traditional law and custom, traditional owners have a right to make decisions about the use and enjoyment of the area (within the native title claim).”*

*“The Department of Fisheries ought to acknowledge that native title claimants have the right to make decisions about the use and enjoyment of their sea country by commercial interests.”*

*“Native title claimants are concerned that, contrary to their entitlement under traditional law and custom, they will not be entitled to receive any income or benefits from fishing-related business activities (e.g. commercial fishing, pearling or aquaculture).”*

*“Under traditional law and custom, traditional owners have the right to maintain and protect places of importance within the native title claim area.”*

### **3.2.2. Examples Of Issues Raised By Other Sectors**

- Western Australian Aboriginal Native Title Working Group (WAANTWG) submission to the Aboriginal Fishing Strategy, 2001.

*“Aboriginal people should play an integral role in partnership with the State Government to conserve and manage the fish resources of Western Australia.”*

*“Aboriginal people must be able to fully express their cultural ties with the sea and not be treated simply as a third user group of fish resources to be accommodated within the environmental limitations.”*

*“Consultations to date have recognised the desire by Aboriginal people to be involved in the development of regional fishing strategies and to be active in the management of local fisheries resources.”*

*“That cross cultural training is undertaken by all Fisheries officers to build a greater level of corporate understanding of Aboriginal issues.”*

*“Opportunities should be explored to integrate Aboriginal people into the fisheries workforce and to seek guidance from Aboriginal people in terms of community education campaigns and ranger functions.”*

*“Legislation to properly recognise the primacy of Indigenous fishing interests in Western Australia is paramount to enshrining those interests in law.”*

- Western Australian Fishing Industry Council (WAFIC) submission to the Aboriginal Fishing Strategy, 2001.

*“WAFIC believes that the lack of documentation of actual Aboriginal take of fish and its associated impacts, and an increasingly uncertain legal status surrounding Aboriginal rights to fisheries have resulted in Aboriginal fishing issues being poorly recognised. The resolution of these two issues is essential to achieve sound resource management.”*

- Recfishwest submission to the Aboriginal Fishing Strategy, 2001.

*“We would strongly support efforts to promote Aboriginal involvement, through the Department of Fisheries, in fisheries management activities, particularly in those areas in which there is strong Aboriginal community representation.”*

- Conservation Council of Western Australia submission to the Aboriginal Fishing Strategy 2001.

*“There is a severe lack of information about traditional and customary fisheries on which to base resource allocation or fishery management plans.”*

*“Carry out a resource allocation that provides an equitable share of Total Allowable Catch to traditional fisheries.”*

*“Resources need to be found to develop a capacity within fishing Aboriginal communities to engage effectively with Fisheries and other marine management agencies, collect and document region-specific information on traditional fishing and the customary use of local fish resources, provide information for the estimation of catch and effort, devise culturally appropriate management frameworks, and develop traditional fishery management plans including a specific traditional sector resource allocation in an integrated fisheries context.”*

### **3.3. Options**

#### **3.3.1 Engaging with Aboriginal Fishing Interests**

Aboriginal interests are being more frequently identified as requiring specific consultation or engagement for issues relating to the protection, management and use of fish resources. However, Aboriginal people are still generally considered part of the recreational fishing sector, and there are few established processes for engaging specifically with Aboriginal people on fisheries issues.

Appropriate recognition of Aboriginal interests as key stakeholders in fisheries is of particular importance, given the current development of an allocation framework as part of the Integrated Fisheries Management Strategy<sup>2</sup>. This allocation framework will be

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<sup>2</sup> Integrated Fisheries Management is described further in Appendix 2.

used to determine how fish resources should be shared among the various groups that use fish resources. Whatever form the allocation process takes, consideration needs to be given to how Aboriginal fishing interests, including traditional owners and native title claimants or holders, are considered and engaged when allocation decisions are made.

It is recommended that Aboriginal people be recognised as a separate key group, and as such afforded the same level of engagement in consultative and management processes as the other two key user groups; the recreational fishing sector and the commercial fishing sector. The rationale for this recognition is:

- Fishing by Aboriginal people has always been recognised as a separate form of fishing in Western Australian fisheries legislation.
- The *Native Title Act 1993*, which overrides any inconsistent State fisheries legislation, acknowledges the right of Aboriginal people to fish in accordance with native title.
- There are notification requirements relating to some fisheries management actions that have been established as a result of the *Native Title Act 1993*. Notification responsibilities have already been established in Ministerial Policy Guideline Number 8, '*Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia*' (Department of Fisheries, 1998) that relate to application processes for pearling and aquaculture development in coastal waters.
- The Government of Western Australia has, in its *Statement of Commitment to Aboriginal People (2002)*, recognised that Aboriginal people have continuing rights and responsibilities as the first people of Western Australia, including traditional ownership. This should include the non-exclusive rights and responsibilities of Aboriginal people to manage and use fish resources in accordance with traditional ownership roles, and be recognised in conjunction with other user groups within today's contemporary fisheries management structure.
- Fisheries are managed successfully when they are managed in partnership with stakeholders. The current level of engagement with Aboriginal people in the development of fisheries policy and legislation is insufficient to provide an environment for successful partnerships with Aboriginal people.
- Continued efforts working toward reconciliation requires recognition of Aboriginal people in the management of fish resources.

**Recommendation 12:** Aboriginal people be recognised as a separate, key fishing sector group and as such afforded the same level of engagement in fisheries consultative and management processes as the recreational fishing sector and the commercial fishing sector.



### **3.3.2 Enhancing Consultation**

In order to recognise Aboriginal interests as a separate key fishing stakeholder group and engage Aboriginal people at the same level as the recreational fishing sector and the commercial fishing sector, consultative mechanisms appropriate to address the unique cultural issues surrounding consultation with Aboriginal interests should also be established.

The importance of consultation has been highlighted by the State Government in a resource guide entitled *Consulting Citizens* (Government of Western Australia, 2002) as a first step in establishing 'best practice' guidelines for Government agencies undertaking consultation.

Consultation is a crucial part of managing fisheries in Western Australia. It can be an extremely effective tool for Aboriginal people to be involved with, and have some influence in, the management of fisheries in this State. The consultation process is how other stakeholder groups such as commercial fishers, recreational fishers and conservation groups participate in the management of fish resources.

However, the existing fisheries consultative mechanisms are not conducive or necessarily appropriate for involvement by Aboriginal people. Existing mechanisms such as Fishery Management Advisory Committees and public discussion documents do not address issues associated with Aboriginal culture and society. For example, Aboriginal people are not a homogenous group, of which one member can represent the views of all. Because of customary tenure and traditional ownership, one Aboriginal representative cannot speak on behalf of another's area, or 'country'. In addition, there are numerous Aboriginal communities, organisations and individuals that differ regionally, structurally and socially.

Consultation with Aboriginal interests should address extended time frames in consideration of, for example, the remoteness of some Aboriginal groups, seasonal conditions that may affect access to Aboriginal communities in the north of the State, cultural ceremonies and 'sorry time'<sup>3</sup>.

Another consideration is that the 'Aboriginal fishing sector' is not experienced in dealing with Government fisheries management processes, terminology and concepts because of a lack of engagement with Aboriginal groups in the past. These are taken for granted when consulting with commercial and recreational sectoral interests with the benefit of decades of experience. For this reason, training and assistance in consultation processes may be required.

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<sup>3</sup> Sorry time refers to the period of time, which may be months, during which the passing of a family or community member is mourned.

A number of options for enhancing consultation with Aboriginal interests as a key stakeholder group are identified below:

### **3.3.2.1 Option 1: Existing Aboriginal Consultation Networks**

There are several existing consultation networks within Aboriginal organisations and communities throughout Western Australia including the Commission of Elders, Aboriginal and Torres Strait Islander Commission (ATSIC), Regional Councils that consist of elected Aboriginal representatives, native title working groups (or prescribed body corporate) and native title representative bodies, Community Development and Employment Project (CDEP) organisations, Aboriginal Resource Centres, Aboriginal community administration offices, and the Department of Indigenous Affairs. Aboriginal radio and other media are also very effective tools to disseminate information, particularly in remote areas.

Each of these organisations or networks presently provide opportunities to engage Aboriginal people in the management of fish resources and assist in disseminating and receiving information. It is a matter of choosing the most appropriate network for the audience and type of consultation required. This process allows for information to flow to a wide range of Aboriginal interests from remote outstations to Aboriginal organisational structures. Because these existing networks and consultative processes have been developed by Aboriginal people and are run by Aboriginal people they already address a number of the issues and challenges relating to Aboriginal consultation.

A disadvantage to the use of such networks is that fisheries issues will be competing with many other issues including health, housing, education and funding. For this reason it is important for the Department of Fisheries to have in depth knowledge about the most appropriate ways to appropriately and effectively utilise the networks.

This process would be relatively efficient and cost effective compared to establishing new consultative structures. It would primarily require someone with an understanding of the issues and networks to coordinate information flow through the various networks. This has been the most commonly suggested process for consultation and was utilised during the consultation process for the Aboriginal Fishing Strategy. There is a risk that without a suitably experienced person to coordinate consultation, the effectiveness of this consultative mechanism would be diminished.

### **3.3.2.2 Option 2: Indigenous Fisheries Management Advisory Committee**

Another option to give Aboriginal interests the same level of recognition as other key stakeholder groups is to establish an Indigenous Fisheries Management Advisory Committee to address State-wide issues and provide advice to the Minister for Fisheries. Membership could consist of representatives of the following;

- Traditional owners

- Aboriginal representatives with experience in the fishing industry
- Regional Council representatives
- ATSIC
- Department of Indigenous Affairs
- Western Australian Aboriginal Native Title Working Group (WAANTWG)
- Western Australian Fishing Industry Council
- Recfishwest
- Conservation Council of WA
- Department of Fisheries

A major barrier to this option is financial, as costs of establishing a State-wide consultative mechanism are significant.

The establishment of an Indigenous Fisheries Management Advisory Committee will provide Aboriginal organisations and individuals with opportunity for direct input into State-wide and strategic policy issues. However, it will not necessarily be effective at consulting with the diversity of Aboriginal interests outside of key Aboriginal organisations. It would not be able to provide a view considered by Aboriginal people to be representative of Aboriginal people because individual members are unable to speak for areas outside of their own. Although a good mechanism to obtain the views from Aboriginal organisations on State-wide issues, it will not be effective at ensuring consultation with Aboriginal people on-the-ground.

### **3.3.2.3 Option 3: Aboriginal Fishing Forum**

A third option raised by Aboriginal interests during consultation was a fishing forum for Aboriginal interests to meet on an annual basis to discuss and develop recommendations to address fishing issues. This form of consultation would require a co-ordinating body to facilitate the event and it is likely that resources would be required for travel and accommodation for attendees. The forum could be a single, State-wide event or a series of forums throughout the State.

### **3.3.2.4 Option 4: Representation on existing Management Advisory Committees and in other fisheries management processes**

In the case of any of these options, membership on other relevant existing Management Advisory Committees should include Aboriginal people as representatives of a key stakeholder group to ensure adequate representation on those committees. Although individual Aboriginal members may only be able to speak for their own area on specific or localised issues, much of the work of Management Advisory Committees is of a broader planning and policy nature, on which Aboriginal representatives can have input and ensure that generic issues important to Aboriginal people are heard. Aboriginal representation is also beneficial for developing relationships and awareness between

Aboriginal people and other key fisheries stakeholders. This has been successful in the Recreational Fishing Advisory Committee.

An induction package and training to introduce and assist Aboriginal MAC members in their role as advisory committee members would be required to familiarise new members with Government fisheries management processes, terminology and concepts.

An alternative, and preferred approach, is to fund a person who is able to represent the views of Aboriginal fishing interests on Fisheries Management Advisory Committees and in other fisheries management processes and forums. The benefits of this option is that the funded position would become familiar with, and develop expertise in, fisheries management concepts and issues and would be able to provide a dedicated and professional representation of indigenous views on State-wide and regional fisheries policy and management issues.

As an example, this option has been successfully utilised in the conservation sector, where a position with the Conservation Council of WA is funded through the Department of Fisheries to independently represent the interests of conservation in the development of fisheries management and policy.

**Recommendation 13:** Consultation between the Department of Fisheries and Aboriginal interests is undertaken by utilising existing Aboriginal community and organisation networks. In addition, a dedicated position external to the Department of Fisheries is funded to represent indigenous interests on Fisheries MACs and in other fisheries management processes.

### ***3.3.3 Engaging Aboriginal Interests in Aboriginal Fishing Area 1***

As identified in earlier sections of this report, Aboriginal people in Aboriginal Fishing Area 1 (see Map 1) are more reliant upon, and have greater roles and responsibilities in the protection and use of fish resources than in other areas. Aboriginal Fishing Area 1 is reflective of:

- The level of dependence upon, circumstance and use of fish resources by Aboriginal people in the area;
- The level of access as a function of tenure of the land adjacent to the water; and
- The level of utilisation of fish resources in the area.

It is proposed that, in addition to engaging Aboriginal people on an equivalent basis to other key stakeholder groups, Aboriginal interests in Aboriginal Fishing Area 1 are given opportunity to participate more extensively in fisheries planning and management processes (as indicated in the management framework set out hereunder). Options for engaging Aboriginal interests in Aboriginal Fishing Area 1 are outlined below.

### 3.3.3.1 Co-operative Decision Making - Inland and Intertidal waters

There are many variations in what constitutes joint-management. Three joint or co-management models outlined in the Environment and Natural Resources Committee (Victoria) Inquiry into Fisheries Management, include:

- 1) A consultative model where government takes the decisions, but consults with stakeholders;
- 2) A co-operative model where government and stakeholders co-operate in decision making; and
- 3) Delegated models in which management authority for some functions is delegated to stakeholders or committees and government is informed of the decision taken. (Environment and Natural Resources Committee, 2001).

The Department of Fisheries in Western Australia currently operates under a consultative model (a). It is recommended that for inland and intertidal waters (low water mark to three nautical miles or State waters) in Aboriginal Fishing Area 1, Aboriginal interests and the Department of Fisheries engage within a two-party cooperative model (b).

In other words, decisions about the protection and use of fish resources by all user groups in inland and intertidal waters adjacent to Aboriginal Fishing Area 1 that may significantly impact on Aboriginal interests should be made through a cooperative decision-making process involving the Department of Fisheries and Aboriginal interests. It must be noted that whatever form a cooperative decision making model takes, the Minister for Fisheries (or the Executive Director of Fisheries as delegated) would retain the final decision making role as required under statute (Part 2, *Fish Resources Management Act 1994*).

The cooperative decision making process would not address the allocation of fish resources, to be considered and addressed through an independent process, which is the subject of the Integrated Fisheries Management Review Committee report provided to the Minister for Fisheries in November 2002.

The cooperative decision making model is recommended for inland and intertidal waters (low water mark to high water mark). Aboriginal people more commonly access these waters than offshore waters. As such, it is more likely that native title would be recognised in inland and intertidal waters than offshore waters, which may have implications to consultation or notification requirements.

It has been reported that the benefits of a joint-management approach include possible improvements in data collection, harvesting decisions, allocation decisions, protection of habitat, compliance, planning and broad policy making (Environment and Natural Resources Committee, 2001). In addition, a joint management approach within an appropriately structured cooperative decision making framework allows for relationships to be built between fisheries management and traditional owners, who can offer additional perspectives and knowledge about fish resources to decision making processes.

This report will not detail the mechanisms required to establish a cooperative model, and possible terms of reference and procedures for formalising cooperative decision making processes. These mechanisms, which would include determining what constitutes a 'significant impact on Aboriginal interests' requires significant work and thought additional to this report, with appropriate input from fishing stakeholders.

### **3.3.3.2 Additional specific consultation – low water to three nautical miles**

Additional to recognising Aboriginal people as key stakeholders, Aboriginal interests that may be significantly affected by fishing activities and fisheries decisions in waters adjacent to Aboriginal Fishing Area 1 from low water mark to three nautical miles, should be engaged by the Department of Fisheries through additional consultation at specific points in fisheries management processes. The intent of this process is to ensure Aboriginal interests are given proper consideration when they are likely to be, or are, significantly affected by fisheries management decisions.

This intention is reflected in Part 14, Division 2 of the *Fish Resources Management Act 1994*, which relates to objections to aquaculture leases and exclusive licences based on rights of traditional usage. Although now legislatively redundant as a result of the *Native Title Act 1993* and the High Court decision (*State of Western Australia v The Commonwealth*, 16 March 1995) rescinding the *Land (Titles and Traditional Usage Act 1993)*, the original spirit of this Division of the *Fish Resources Management Act 1994* was to ensure rights of traditional usage are given proper consideration.

This consultation process should be defined by the Minister for Fisheries in Ministerial Policy Guidelines that guide the Executive Director of Fisheries and include a statement of the principles and other matters to be considered in making determinations. Ministerial Policy Guidelines should include guidance as to how Aboriginal interests are to be consulted, and as to how issues, which the Minister considers to be of importance to Aboriginal people, are given proper consideration. For example, in the case of determining or amending management plans (s. 64 and 65 of the *Fish Resources Management Act 1994*).

Table 2 reflects the recommended levels of engagement that should be afforded Aboriginal interests when addressing fish resource management issues in Aboriginal Fishing Area 2 and Aboriginal Fishing Area 1.

**Table 2 Framework for engaging Aboriginal interests in fisheries management**

<p><b>Minister or delegate retains decision making authority as required by statute Sustainability principles apply. <i>Native Title Act 1993</i> notification requirements apply.</b></p>	
<p><b>Inland and intertidal waters in Aboriginal Fishing Area 1</b></p>	<p>Joint management or cooperative decision making with Aboriginal interests when a decision may have a significant impact on Aboriginal interests. Possible examples include review of management plans, legislation or implementation of a fish habitat protection area.</p>
<p><b>Waters from low water mark to three nautical miles or State waters in Aboriginal Fishing Area 1</b></p>	<p>Specific consultation with Aboriginal interests when a decision may have a significant impact on Aboriginal interests. Possible examples include review of management plans, legislation or implementation of a fish habitat protection area.</p>
<p><b>Waters within Aboriginal Fishing Areas 1 and 2 (all State waters)</b></p>	<p>Aboriginal people recognised as a unique fish user group and engaged in management decisions at an equivalent level as commercial and recreational fishing sectors.</p>

**Recommendation 14:** In addition to recognising and engaging Aboriginal people as key fishing sector interests in all State waters, and with recognition that the Minister for Fisheries or the Minister’s delegate will retain final decision making authority as required under statute, any decision pursuant to the *Fish Resources Management Act 1994* or *Pearling Act 1990* that may have a significant impact on Aboriginal interests in:

*Inland and intertidal waters in Aboriginal Fishing Area 1:* should be made through joint management or cooperative decision making processes between the Department of Fisheries and Aboriginal interests. Mechanisms for that cooperative decision making process must be developed in consultation with stakeholders.

*Waters from low water mark to three nautical miles (or State waters) in Aboriginal Fishing Area 1:* should be made through specific consultation processes between the Department of Fisheries and Aboriginal interests. Mechanisms for that specific consultation process must be developed in consultation with stakeholders.

### **3.3.4. Allocations For Customary Fishing**

#### **3.3.4.1 Allocation Priority**

Decisions are made regularly by the Department of Fisheries to address how fish resources are shared among competing user groups and protected against overfishing. Recently, the Integrated Fisheries Management Review Committee reported to the Minister for Agriculture, Forestry and Fisheries on the development of an integrated fisheries management system in Western Australia (Integrated Fisheries Management Review Committee, 2002).

This approach requires decisions to be made about setting broad allocations between groups within the sustainable catch limits determined for each fishery, and strategies to overcome temporal and spatial competition at a local or regional level. All of these decisions can have an impact on customary fishing. The question is at what point and level should customary fishing be affected by changes to allocations and/or fisheries management arrangements?

The Commonwealth Law Reform Commission's report number 31, *The Recognition of Aboriginal Customary Laws* recommended:

*“As a matter of general principle, Aboriginal traditional fishing should take priority over non-traditional activities, including commercial and recreational activities, where the traditional activities are carried on for subsistence purposes. Once this principle is established the precise allocation is a matter for the appropriate licensing and management authorities acting in consultation with Aboriginal and other user groups.”*

The Law Reform Commission also recommended that conservation principles represent a legitimate limitation on the rights of indigenous people to fish.

As an example, the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII defines subsistence uses, accords a preference or priority to the taking of fish and wildlife for subsistence over taking for other uses, and establishes criteria for restrictions on take for subsistence when necessary to protect the resource (Buklis L.S., 2002).

The term 'subsistence' in both the Commonwealth Law Reform Commission's report number 31 and the Alaska National Interest Lands Conservation Act (ANILCA) are both intended in the broader context to include the customary and traditional uses, which include ceremonial exchange, barter, satisfaction of kin obligations and use for direct personal or family consumption as food.

Allocation processes in fisheries where customary fishing (as defined in this document) is practised should recognise customary fishing as having priority over other fishing sectors, including commercial and recreational fishing. The rationale for this includes:

- Customary fishing activity by Aboriginal people is a right expressed in Commonwealth legislation (*Native Title Act 1993*).



- The right of indigenous people to fish in a customary manner is covered by the *International Convention on Civil and Political Rights* and the *International Convention on Biological Diversity*.” (Offshore water rights discussion booklet, 2002).
- Recognition of the continuing importance of fish and fishing to Aboriginal people as a direct source of food, an integral part of many Aboriginal people’s culture, a part of the educational process and passing on of information, and spiritual connection to the land and sea.
- The Western Australian Government recognises Aboriginal people as having continuing rights and responsibilities as the first peoples of the State. This includes the continuing practice of customary fishing.

**Recommendation 15:** In relation to allocation processes, customary fishing should be given priority over other fishing sectors including commercial and recreational fishing.

#### 3.3.4.2 Fixed Allocations

The level of customary take in a particular fishery should be assessed by the Department of Fisheries and a fixed allocation prescribed that meets all of the customary requirements from that fishery. A fixed allocation is required for two purposes, the first being fisheries assessment and reporting requirements, and secondly, to ensure any allocations made to other sectors do not impact on the ability of Aboriginal people to meet their customary requirements from that fishery.

However, there may come a time where the fixed allocation attributed to customary fishing is a proportionally large enough component of the sustainable catch level in a fishery that it affects the ability of management to restrict the total take in a fishery in response to sustainability needs. This might come about by reductions in other sectors or variations in fish stocks.

If this becomes the case, the fixed customary fishing allocation should be reduced for sustainability reasons. That is, customary catch allocations should be fixed until they constitute a substantial component of the allowable catch in a fishery, at which point the fixed allocation must be reduced.

As a hypothetical example, it may be determined that commercial and recreational fishers are each able to take 45 tonnes of bluefish a year and customary fishing of bluefish is given a fixed allocation of 10 tonnes a year. Stocks of bluefish begin to decline so allocations to the commercial and recreational sectors are each cut to 30 tonnes a year. The customary fishing fixed allocation would remain at 10 tonnes a year.

If stocks of bluefish continue to decline, commercial and recreational allocations would be reduced further and a point would be reached where the customary take in the fishery is a substantial proportion of the total available catch and it would become necessary to

also reduce the fixed customary allocation to ensure sustainability is not compromised. The point at which fixed customary allocations are or become a ‘substantial proportion’ of the total available catch in a fishery will need to be determined by the Department of Fisheries, based on the best available information and in consultation with customary fishing interests.

Given an estimated one per cent of the population participates in customary fishing in Western Australia, and in most cases customary fishing take is anticipated to be relatively low compared to commercial and recreational take, it is not expected that reductions in allocations will be required in most customary fisheries in the foreseeable future. In the longer term, the application of management and allocation adjustments will ensure on-going sustainability of resources, and include customary fishers appropriately in on-going management of important resources.

Recognition of customary fishing as a priority in fisheries allocation does not quarantine it from all management adjustments. If there is clear evidence that there is a need to protect fish for biological reasons (for example at important stages of its life cycle such as spawning events) measures to protect fish for this purpose must apply across all user groups for the benefit of the fishery. In such a case there is no priority to any fishing sector.

**Recommendation 16:** A fixed allocation that meets all of the requirements of customary fishing should be prescribed in each fishery. This allocation should be based on the best available information and in consultation with Aboriginal interests. The fixed customary allocation should only be reduced where sustainability is threatened or it becomes a substantial component of the total available take in a fishery. The point at which fixed customary allocations are, or become, a “substantial proportion” of the total available catch in a fishery will need to be determined by the Department of Fisheries based on the best available information and in consultation with customary fishing interests.

### **3.3.5 Information requirements to support allocation and management decisions**

The Commonwealth of Australia has developed *Guidelines for the Ecologically Sustainable Management of Fisheries* (Environment Australia, 2001) and incorporated ecological sustainability requirements into Commonwealth environmental and fisheries legislation. These guidelines and legislation require the Department of Fisheries in Western Australia to ensure that fisheries that include export of marine species undergo assessment to determine the extent to which management arrangements will ensure the fishery is managed in an ecologically sustainable way.

One of the objectives that need to be met for assessment purposes includes: *that there are reliable estimates of all removals, including commercial (landings and discards), recreational and indigenous, from the fished stock.*

Further to the Commonwealth reporting requirements, reasonable information on which to base decisions, is fundamental to sound resource management. The Integrated Fisheries Management Review Committee has recommended in its report to the Minister for Fisheries (2002) “*the development and funding of a comprehensive research and monitoring program encompassing all user groups is essential to provide the necessary information for sustainability and allocation issues to be addressed under an integrated framework.*” There is a distinct lack of information currently available about the relative impact on fish resources as a result of customary fishing.

A survey of customary fishing that builds on the outcomes of the National Indigenous Fishing Survey (yet to be published) is recommended to provide the information required for sound management of fish resources. The following criteria must be met when developing and undertaking such research:

- Care must be taken to ensure information is collected in culturally sensitive and appropriate ways;
- The research methods, rationale and what the information will be used for must be transparent to the Aboriginal community; and
- Ownership of the information needs to be clearly established and understood before beginning the program.

One example of a program that may meet these requirements includes an Indigenous Subsistence Fishing Survey Kit, developed by indigenous interests (Balkanu, Queensland), and written for indigenous communities. It is designed to allow Aboriginal communities to collect and organise their fishing information over a period of time in a culturally appropriate manner. Under this arrangement, information collected by the community is owned by the community. As part of the community’s contribution to sustainable management of fish resources data should be made available in a useful form by the community to the Department of Fisheries.

A benefit to Aboriginal communities from collecting this data is information that Aboriginal people can use when debating issues in fisheries management forums. In addition it could provide Aboriginal people with information to complement their own knowledge about the fish stocks and fishing pressure in an area. The benefit to the Department of Fisheries is the ability to manage fish better, meeting its obligations under the *Fish Resources Management Act 1994*, and ability to better meet Commonwealth reporting requirements.

A potential funding source for the development and collection of information is the Fisheries Research and Development Corporation (FRDC), but there remains a requirement for some level of commitment of resources from the Department of Fisheries.

**Recommendation 17:** A survey of customary fishing that builds on the outcomes of the National Indigenous Fishing Survey (yet to be published) is recommended as a priority to provide information required for sound management, including the ability to address sustainability and allocation issues under an integrated fisheries management framework.

### **3.3.6 Protecting Cultural Heritage**

Consultation identified a need to give consideration to the protection of cultural heritage sites from the impacts of fishing activity, and the protection of important customary fishing areas from other fishing activity and activities associated directly with fishing. These needs are discussed in the following chapters.

#### **3.3.6.1 Customary fishing areas**

The protection of specific areas adjacent to Aboriginal land for customary fishing has been recommended by the Commonwealth Law Reform Commission (in its report on *The Recognition of Aboriginal Customary Laws*, 1986) and is consistent with aspirations raised through consultation undertaken as part of this strategy.

The establishment of more effective consultation and co-management frameworks, and recognition of Aboriginal Fishing Area 1 (Map 1), will ensure Aboriginal interests are given consideration in resource sharing and allocation debates and greatly enhance the ability of Aboriginal interests to protect cultural heritage and customary fishing practices. This protection can be achieved through existing resource sharing and legislative processes, consistent with the creation of special commercial fishing zones, commercial closures in key or priority recreational fishing areas, or fish habitat protection areas.

As an example, the Department of Fisheries has already recognised key Aboriginal communities as requiring protection from commercial mud crab fishing to ensure there are sufficient mud crab in areas adjacent to communities for customary needs. Other requirements for protection identified in consultation include the protection of specific customary fishing areas, such as lore grounds. To ensure a coordinated approach to the assessment and implementation of these resource sharing initiatives, this report recommends the development of policy guidelines to address criteria for the assessment and implementation of customary fishing areas.

Consistent with the recommendation of the Commonwealth Law Reform Commission's recommendations in its report *The Recognition of Aboriginal Customary Laws* (1986), this report considers that customary fishing areas should be limited to Priority Areas (for Priority Areas see Map 1).

**Recommendation 18:** Policy guidelines relating to the use of existing legislative mechanisms to protect areas identified by the Minister for Fisheries as important for customary fishing should be developed for Aboriginal Fishing Area 1, and include assessment and implementation procedures.

### 3.3.6.2 Protecting cultural heritage sites, areas and values

It is important for the Department of Fisheries to note the need to ensure consistency with statutory Aboriginal heritage protection requirements (as described in the *Aboriginal Heritage Act 1972*) in development of fisheries management and policy, particularly where Aboriginal heritage is linked directly to physical and biological attributes of the marine environment. Consultation with indigenous organisations in these instances, in particular the Department of Indigenous Affairs, is encouraged to ensure fisheries management, policy and legislative development is consistent with statutory Aboriginal heritage requirements.

Consultation with traditional owners in the Kimberley region of the State has revealed a major concern among Aboriginal people relating to tourists visiting culturally-sensitive areas on aquatic tour ventures. These have recently become subject to fisheries legislation and policy in Western Australia.

Some of the areas visited by charter boats are contained within Aboriginal reserve land for which legal access is only possible by obtaining permits pursuant to the *Aboriginal Affairs Planning Authority Act 1972*, and some of the sights that tourists may wish to see are protected under the *Aboriginal Heritage Act 1972*. It is acknowledged that there is limited understanding by the public and fishing sector of the legal requirement to hold a permit to gain land access to many areas along the Kimberley coast and Aboriginal heritage protection requirements. Therefore, it is likely that promotion of Aboriginal heritage protection will alleviate many of these issues.

If there is an identified need to provide protection for particular Aboriginal sites or areas from impacts of fishing activities, an option to be considered is the use of existing fisheries legislative and licensing mechanisms to limit or restrict access to particular areas by fishing sector interests. Another is to appropriately amend the *Aboriginal Heritage Act 1972*.

**Recommendation 19:** Requirements relating to access to and protection of Aboriginal reserves and sites pursuant to the *Aboriginal Affairs Planning Authority Act 1972* and *Aboriginal Heritage Act 1972* should be promoted among the fishing sector and Department of Fisheries. If there is an identified need to provide protection for particular Aboriginal sites or areas from impacts of fishing activities, the use of existing fisheries legislative and licensing mechanisms to limit or prevent legal access to particular areas by fishing sector interests should be considered.

### **3.3.7 Marine Resource Use Planning**

Aboriginal interests are an important part of planning marine resource uses and have expressed their aspirations to be recognised and included in these planning processes. Aboriginal people have also voiced concern about their own ability to effectively provide input into fisheries consultative and planning processes without a strategic overview of their own needs, primarily from a lack of resources to do so.

Aboriginal interests, particularly traditional owners, have expressed a desire to undertake a proactive marine planning process to identify their needs and aspirations for particular areas, with the assistance of a consultant. These plans would then be used as a submission to government marine planning processes. They would also be available to fishing sector interests who could then identify issues prior to making applications for licences.

It is anticipated the marine plans would include culturally sensitive areas, areas identified for future economic development use, e.g. aquaculture by traditional owners, customary fishing needs, locations of communities or planned outstations, etc.

The benefits of such a process would include:

- Proactive and coordinated input from Aboriginal interests resulting in better opportunities for issues to be considered.
- Provision of solid planning information into broader government planning processes to ensure Aboriginal interests are considered appropriately.
- Better understanding and recognition of Aboriginal issues and aspirations in fisheries planning and management processes.
- Better understanding by proponents of issues prior to applications/proposals leading to more efficient consultation processes.
- Better information and transparency for decision makers.

In the longer term, it is anticipated these planning processes would assist in reducing overall consultation costs. Where possible, a marine planning process should be linked with the Department of Fisheries existing regional fisheries planning program. Because of the benefits of such a program to whole of Government planning and other Aboriginal interest groups, both Government and external funding options should be sought by the Department of Fisheries in partnership with Aboriginal interests for such an initiative.

It is important to note that the plans will not be successful unless Aboriginal people retain ownership of the process, which is essential for credibility.

**Recommendation 20:** Resources be identified and secured to assist Aboriginal interests develop Aboriginal marine resource use plans, to be used, among other things, as submissions to Government marine planning processes, including fisheries consultative programs.

### **3.3.8 Capacity Building and Employment**

This section refers to an identified need to ensure there is not only improved consultation to ensure involvement of Aboriginal people in the way fish are protected and shared, but also to have Aboriginal people employed and participating in contemporary fisheries management. Employment may be either within the Department of Fisheries or other organisations that engage in marine management such as ATSIC or land and sea councils.

In the same way that the management of fish resources benefits from having experienced and professional individuals in the conservation, commercial and recreational fishing sectors, it is beneficial to have individuals experienced in fisheries management in Aboriginal organisations with which the Government engages. These individuals all play a vital role in developing creative solutions to fisheries resource management challenges and developing a greater understanding between management, stakeholders and indigenous groups.

#### **3.3.8.1 Aboriginal Recruitment and Employment Policy**

Part of the longer term strategy to improve Aboriginal involvement in fisheries management is to ensure Aboriginal people are employed within the Department of Fisheries in the fisheries compliance and management fields. To ensure this occurs, an Aboriginal employment policy for the Department of Fisheries is recommended.

The *Royal Commission into Aboriginal Deaths in Custody* (Johnston, E. et al 1991) recommended that “governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.” The Department of Fisheries should enhance its current employment policy to reflect, at a minimum, regional and State-wide Aboriginal population ratios.

On the State-wide level, 3.2 per cent of the population is identified as being Aboriginal (ABS, Census 2001). The Department of Fisheries should as a matter of policy set an increased employment target to obtain a minimum 3.2 per cent employment rate of Aboriginal people across the whole Department.

More particularly, employment targets should reflect the proportional population make-up in regional areas where possible. For example, the Department of Fisheries should aim to employ a greater proportion of Aboriginal people in northern regions of the State (particularly the Kimberley in which 33.3 per cent of the population is indigenous [ABS, 2001 Census]).

Consideration must also be given to the types of positions held by indigenous people employed within the Department. The Department must encourage and provide adequate

training to Aboriginal people who wish to aspire to more senior levels within the organisation. For example, the Developing Future Natural Resource Managers and Leaders Traineeship discussed in the next chapter is targeting training for indigenous Western Australians to begin employment with the Department at management level.

The Department currently employs five people who identify themselves as Aboriginal, representing approximately 1.5 per cent of the Department's staff. In order to meet a 3.2 per cent employment target, the Department needs to employ an addition six or seven indigenous people as full-time employees. It is proposed that the target minimum employment of 3.2 per cent be met within four years, consistent with the time it takes for two cycles of the Future Natural Resource Managers and Leaders program outlined in the next chapter.

Outcomes should be consistent with the Government's Equity and Diversity Plan for the Public Sector Workforce 2001/05.

To assist in the recruitment and retention of Aboriginal staff, the employment policy should also include an Indigenous Recruitment and Career Development Strategy, similar to strategies developed by the Department of Employment, Workplace Relations (DEWR, 2002). Examples of initiatives may include developing a recruitment assistance package for prospective indigenous Australian job applicants, consideration of transfer policies of Aboriginal staff in light of cultural and family ties to particular regions, and involving existing indigenous staff in corporate recruitment activities such as assisting in attracting indigenous applicants.

It is anticipated that such recruitment and career development strategies will assist the Department of Fisheries to reach and maintain Aboriginal employment targets.

**Recommendation 21:** The Department of Fisheries develop an Aboriginal employment policy that includes:

- a. Minimum employment targets that reflect the proportionate representation of Aboriginal people in the State population; and the proportionate representation of Aboriginal people in the population for each region as appropriate;
- b. Affirmative training and mentoring programs to encourage those individuals of Aboriginal descent who seek more senior positions within the Department to gain the capacity to do so; and
- c. An Indigenous Australian Recruitment and Career Development Strategy.



### **3.3.8.2 Employment and Training Programs**

There are a number of employment programs that can be used to achieve greater representation of Aboriginal interests in fisheries management related positions in Government and Aboriginal organisations. These options include the Developing Future Natural Resource Managers and Leaders program.

The Working Group recommended early in its term the creation of an Aboriginal trainee fisheries officer / management officer program, with a long term view of enhancing the traditional resource management skills of Aboriginal people with contemporary natural resource management skills.

It is essential in the medium to longer term that Aboriginal people have not only the opportunity, but also the capacity, to be involved in contemporary natural resource management, compliance and research fields to ensure effective representation in issues such as resource allocation debates.

The longer term vision of this proposal is to provide opportunities for the development of Aboriginal people as future natural resource managers and leaders, a key outcome of the Aboriginal Fishing Strategy.

The program will focus resources on quality training to provide opportunities for those who wish to move into high level management and leadership positions within the fishing sector. The program should consist of a two-year traineeship in which participants will receive nationally accredited training in fisheries compliance, combined with extensive training and experience in policy development and management. The program should primarily be delivered through practical on-the-job training in compliance, education and fisheries management and administration.

This proposal would have medium and long-term benefits to both the Department of Fisheries and the Aboriginal community. These benefits include:

- Enhancing indigenous involvement in fisheries management;
- Creating employment opportunities and career paths for Aboriginal people;
- Capacity building within the Aboriginal community in natural resource management, community consultation, law enforcement, education, research and other varied skills that will assist in the management of fish resources;
- Assisting capacity building and understanding within the Department of Fisheries about Aboriginal culture and interests;
- Assisting efforts for reconciliation;
- Enhancing consultation and relationships between the Department and Aboriginal people; and
- Meeting Aboriginal community aspirations and address recommendations of several national and State reports on the need to involve indigenous interests in fisheries management.

### **3.3.8.3 Aboriginal Fisheries Wardens**

In addition to the traineeships, a further option is to establish and support Aboriginal Fisheries Wardens in the remote communities in the East and West Kimberley. The roles of these wardens would primarily be education and consultation, playing an integral role in the involvement of Aboriginal people in the fisheries management process at community level.

The wardens would be provided with some training in fisheries compliance to allow for the collection of evidence and reporting of illegal fishing activity. However the wardens would not have the authority to exercise the powers of a Fisheries officer. Fisheries compliance requires extensive training and skills to ensure safe work practices while undertaking an enforcement role.

It would be essential to include mentoring and frequent visitation to ensure success of the project.

The Department should give consideration to joint training and employment of wardens with organisations that have compliance and Aboriginal community consultation roles such as the Department of Agriculture, Department of Indigenous Affairs, Department of Conservation and Land Management and local government.

Issues to note regarding this option include the aspirations of Aboriginal people in communities to have real jobs and not subsidised positions through the Community Development and Employment Project (CDEP) program. This is an important consideration for funding.

### **3.3.8.4 Cadetship Program**

The National Indigenous Cadetship Project (NICP) is a Commonwealth Government initiative aimed at improving the professional employment prospects of indigenous Australians. The NICP is administered by the Indigenous Employment Branch within the Department of Employment and Workplace Relations.

NICP provides opportunities for indigenous Australians to gain the professional qualifications needed for a range of jobs in both the public and private sectors. It assists in matching students who intend on studying full time toward an undergraduate degree at university with employers who can give them work skills and professional employment experience.

**Recommendation 22:** To provide opportunities to build capacity of Aboriginal people in natural resource management the Department of Fisheries;

- a. Establish a Future Managers and Leaders Program to enhance the ability for Aboriginal people to engage Government and industry in natural resource management, and increase employment opportunities.
- b. Pilot an Aboriginal Fisheries Warden program in the Kimberley region to assess its practical viability and benefits to Aboriginal people and fish resource management (options for joint funding, training and employment with organisations involved in natural resource management should be investigated).
- c. Consider utilising the National Indigenous Cadetship Program.

### **3.3.9 Community Awareness and Education**

Community awareness and education are extremely important tools in fisheries management. The following options for increasing community awareness were identified during consultation.

#### **3.3.9.1 Targeting the message to indigenous people**

Existing fisheries messages, educational material and information about management of fish resources needs to be targeted at Aboriginal people in appropriate forms, promoting *fish for the future*, sustainability, fishing rules and why they are there and who to ask for information about fishing. Current information is not suitably targeted.

Examples can be found in existing promotional programs developed by Aboriginal people including Aboriginal health and education programs.

#### **3.3.9.2 Message delivery and spokesperson**

It has been suggested that educational information about sustainable fishing could be developed as a joint message from traditional owners and the Department of Fisheries. Instead of the message of *fish for the future* coming from the 'government authority' responsible for enforcing the legislation, it should be a joint message from the traditional owners of the area and the Department of Fisheries, indicating customary and contemporary stewardship responsibilities working together.

As an extension of the joint messages, an Aboriginal spokesperson for sustainable fishing to assist the Department of Fisheries could also be identified for articles and advertisements. This would also assist in raising awareness of Aboriginal culture and fishing. The Water Authority of Western Australia and Department of Agriculture have run similar programs successfully in Western Australia.

### **3.3.9.3 Liaison – a conduit between the Department of Fisheries and the community**

Another option suggested that links with the Aboriginal community warden program outlined in Recommendation 27 is the training of proposed wardens as a conduit and contact point between Aboriginal communities and the Department of Fisheries.

Funding is a consideration for this particular option. Joint funding with other organisations such as the Department of Agriculture and the Conservation and Land Management Authority may provide opportunities for liaison officers in communities based on natural resource management programs.

### **3.3.9.4 School programs**

Children under the age of 15 make up about 40 per cent of the Aboriginal population (ABS, 2001 Census). Providing information to children in schools is an excellent way to get information to parents and older generations as well, according to Aboriginal people. It is obviously also important to educate children and future generations about sustainable fishing practices.

Existing schools programs developed by the Department of Fisheries should be modified if necessary to be more targeted toward Aboriginal children. Distribution of the school fishing programs should also be targeted to ensure Aboriginal community schools are included.

### **3.3.9.5 Volunteer Fisheries Liaison Officer (VFLO) Program**

Volunteer Fisheries Liaison Officers (VFLOs) are people from the general community who wish to assist in the of quality fishing into the future. Their role includes the promotion of fishing conservation ethics, raising of awareness and support for fisheries management. They often assist in fisheries research programs, provide advice to recreational fishers about rules and provide a valuable avenue of communication between recreational fishers and the Department of Fisheries.

VFLOs have proved very successful in these roles and can take a great deal of the credit for community support for conservation of fish stocks, and community acceptance of personal responsibility for the aquatic environment.

The VFLO program represents an opportunity for Aboriginal people interested in the long term sustainable use of fish resources to be involved in spreading fish conservation messages to the broader community.

**Recommendation 23:** An Aboriginal community relations program be established by the Department of Fisheries that considers the following possible components:

- a. The Volunteer Fisheries Liaison Officer (VFLO) program is promoted within Aboriginal communities and organisations to assist in gaining greater Aboriginal involvement in the program.
- b. An indigenous Western Australian is identified as a spokesperson for the Department of Fisheries to deliver sustainable fishing messages.
- c. Where appropriate, fishing educational materials such as signs include sustainable fishing messages from both traditional owners as customary stewards and the Department of Fisheries.
- d. Existing fisheries messages and information be targeted at Aboriginal interests.
- e. Existing schools programs developed by the Department of Fisheries be targeted at Aboriginal children and Aboriginal community schools.
- f. Aboriginal Fisheries Wardens (if established) be utilised to assist in liaison between the Department of Fisheries and Aboriginal communities.

### **3.3.10 Cultural Awareness**

Appropriate and locally relevant cultural awareness training is an integral part of ensuring greater recognition and understanding of Aboriginal fishing and related issues.

One of the most consistently raised issues resulting from consultation is the need for cultural awareness training for Department of Fisheries staff. Aboriginal people see this as a key opportunity to avoid confrontation. Relevant cultural awareness information should also be provided and promoted to other fisheries stakeholders.

This is consistent with the *Western Australian State Sustainability Strategy – Focus on the Future*, which proposes to “expand indigenous cross-cultural awareness training within the Western Australian public sector for all employees who have involvement with indigenous people or are involved in indigenous policy.” (Government of Western Australia, 2002).

**Recommendation 24:** Cultural awareness training is made compulsory for all full time Fisheries officers and Fisheries managers.

### **3.3.11 Recognising Aboriginal People In Fisheries Research**

Indigenous knowledge is a relatively untapped source of valuable information that can be used in the development of everyone’s understanding of fish resources. Joint or

partnership research programs should be encouraged and developed whenever appropriate to allow for the exchange of information and incorporation of traditional knowledge.

The Fisheries Research and Development Corporation (FRDC) have a specific program area relating to indigenous fisheries research.

In addition to identifying opportunities to work with indigenous interests in the development and carrying out of fisheries research projects, there is a need to identify research needs resulting from Aboriginal fishing practices or ventures. As an example, research is required on species such as trochus and mud crab, which are commercially fished by Aboriginal communities.

Consideration must be given to the following issues when dealing with Aboriginal interests for fisheries research projects:

- Care must be taken to ensure information is collected in culturally sensitive and appropriate ways;
- The research methods, rationale and what the information will be used for must be transparent to the Aboriginal community; and
- Ownership of the information needs to be clearly established and understood before beginning the program.

**Recommendation 25:** Joint or partnership fisheries research programs be identified, encouraged and developed in the fisheries research budget process, including identification of research needs resulting from Aboriginal fishing practices/ventures, and whenever appropriate research programs explore opportunities for the exchange of information and incorporation of traditional knowledge.

### **3.3.12 Aboriginal Fishing Unit**

One of the key issues identified in the Commonwealth Resource Assessment Commission's Coastal Zone Inquiry (1993) is a lack of policy development and management expertise devoted to indigenous fisheries by fisheries management authorities.

Consistent with this finding, Working Group consultation identified a desire by Aboriginal people to have established in the Department of Fisheries an Indigenous Fisheries Unit or program. The purpose of this program would be to develop policy and management arrangements consistent with the final outcomes of this report and ensure representation of Aboriginal interests in fisheries management making structures.

The Working Group will, during the public consultation phase, develop an implementation plan that includes anticipated work programs to be undertaken and an

adequate resource base to ensure strategies can be developed. This implementation plan will be provided to the Minister for Fisheries, along with changes resulting from public consultation, as part of the final report.

Because issues relating to indigenous fishing will be a 'new initiative' within fisheries management, they have not been factored into budgets and with limited funding it is difficult to resource during the transition. Additional, external resources may need to be identified in the interim, and for the speedier implementation of key initiatives over the longer term.

Commercial and recreational fishers, through licence fees and other cost recovery mechanisms, contribute approximately 45 per cent of the budget for the management of fisheries in Western Australia. This allows for greater management, research, education and compliance services to those sectors.

**Recommendation 26:** An Aboriginal Fishing Program is developed in the Department of Fisheries to administer, coordinate and implement Aboriginal fishing initiatives. Government should resource this program and seek additional funding assistance from external organisations to enhance implementation of key initiatives and provide more effective services to Aboriginal clients.

### **3.3.13 Native Title Determinations And Sustainability**

In the case that native title allows unsustainable fishing practices, the sustainability of fish stocks may be threatened. The preferred action in such a case is consultation with native titleholders to develop a workable solution, which may result in amendments to fisheries legislation or alternative agreed management arrangements.

If it is the case that native title determinations are made that are in direct contravention of the objects of the *Fish Resources Management Act 1994*, threaten the sustainable use of fish resources and a workable solution can't negotiated with native title interests, consideration must be given to legislative procedures to ensure the protection of fish stocks. This may include the development of fisheries legislation that over-rides native title determinations and may lead to the payment of compensation to native titleholders.

**Recommendation 27:** In the case that native title as determined permits unsustainable fishing practices, the preferred action is consultation with native title interests to develop a workable solution. Failing this, consideration must be given to legislative procedures that prioritise the responsibility to protect fish above native title rights to take fish, and may lead to the payment of compensation to native titleholders.





## **SECTION 4 ECONOMIC DEVELOPMENT**

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### **4.1. Current Management Overview**

#### **4.1.1 Commercial fishing**

Generally, access arrangements to commercial fisheries apply to all Australian residents. Some Aboriginal interests, in particular many of the Malgana people in the Shark Bay region, have and continue to participate in commercial fisheries as a result of historical and existing access arrangements to commercial fisheries.

Aboriginal communities in remote areas can also apply for a Special Aboriginal Community Fishing Licence that authorises Aboriginal people to fish commercially for mud crab, trochus or beche-de-mer. These licences are non-transferable and require the permission of traditional owners. This policy was established in 1989 in recognition of the limited opportunities for remote Aboriginal communities to be financially independent.

#### **4.1.2 Pearling**

A pearling licence can be obtained by purchasing a minimum amount of pearl fishery units (quota) on the open market. Once this minimum quota is obtained, a pearling licence may be issued by the Department of Fisheries.

Anyone who wishes to obtain a pearling lease under the *Pearling Act 1990* may do so by application to the Executive Director. The assessment of applications for pearling authorisations is set down in Ministerial Policy Guideline No. 8. *Assessment of applications for Aquaculture and Pearling in coastal waters of Western Australia.*

#### **4.1.3 Aquaculture**

The Department of Fisheries has aquaculture development officers in Western Australian regional centres. These development officers provide advice and assistance to people or groups wishing to develop aquaculture projects. In the Kimberley region, the aquaculture project officer based in Broome, who is partially funded by ATSIC, is giving particular attention to aquaculture programs involving Aboriginal interests.

The Tropical Aquaculture Park in Broome provides serviced lease sites for the aquaculture industry and related activities such as education, training and research. The Minister for Fisheries has established the park in partnership with the Rubibi Aboriginal

Heritage, Land and Development Company Pty Ltd (RAHLDC). RAHLDC was given an option to use one of the lease sites for a three year period.

An Aboriginal cooperative, the Kimberley Aboriginal Aquaculture Corporation (KAAC), is developing a multi species hatchery with funding assistance from government and ATSIC. KAAC has plans to initially focus on trochus. In the longer term the hatchery will be used for other high value species such as clam and barramundi. Several Aboriginal communities in the Kimberley have been granted aquaculture licences for grow out of trochus shell.

Anyone who wishes to obtain an aquaculture lease or licence under the *Fish Resources Management Act 1994* may do so by application to the Executive Director. The assessment of applications for aquaculture authorisations is set down in Ministerial Policy Guideline No. 8. *Assessment of applications for Aquaculture and Pearling in coastal waters of Western Australia.*

#### **4.1.4 Aquatic Charter Industry**

All aquatic charter operations in WA based on fish or fish habitats require a licence under the *Fish Resource Management Act 1994*. There are a number of Aboriginal interests that participate in the fishing tourism industry.

## **4.2. Consultation Outcomes**

### **4.2.1. Aboriginal People's Aspirations and Issues**

- Issues faced by many Aboriginal people trying to establish themselves in the fishing sector include:
  - a) High entry costs combined with funding shortages to start projects;
  - b) A need for information and training in the legal, business planning, technical and marketing aspects of fisheries required to get established in the industry; and
  - c) A feeling that they are not competing for access to fisheries on a level playing field.
- Aboriginal people often have difficulty in meeting funding criteria for community based projects that can only demonstrate social benefits in the short term, even if potential for economic outcomes in the longer term is identified. These projects are often smaller scale and community driven projects which, given resources, can initiate the incentive and ownership that is required to develop economically profitable projects in the longer term.
- In addition, native title interests have in some areas of Western Australia, claimed:

- a) The right to trade in resources in the area; and
- b) The right to receive a portion of any resources taken by others from the area.

More specifically, commonly raised Aboriginal interests and aspirations have been categorised below into pearling and aquaculture, aquatic charter and commercial fishing.

#### **4.2.1.1 Pearling and Aquaculture**

- Many Aboriginal people and communities have expressed a strong interest in developing aquaculture opportunities.
- Many Aboriginal groups have expressed an interest in using aquaculture to meet social objectives in the first instance, such as providing food for the community, replacing diminished fish stocks and providing options for young people to remain in the communities, providing an occupation and training opportunities.
- There appears to be a lack of understanding by many Aboriginal groups who have not had experience with aquaculture, of the long term nature, resources and effort required for many aquaculture projects.
- Aboriginal aquaculture development and assistance is being provided to Aboriginal communities in the Kimberley through the Kimberley Aboriginal Aquaculture Corporation.
- Aboriginal communities do not have the resources to develop large or medium scale aquaculture ventures without funding assistance or outside investment for such projects.
- Aboriginal communities have expressed interest in particular species for aquaculture based on familiarity with those species or even cultural links. However, these species may not be suitable for marketing or technical reasons.
- Concerns have been raised about meeting aquaculture research for species Aboriginal people are interested in.
- Aboriginal communities are very concerned about the encroachment of other pearling and aquaculture leases/licences that may exclude them from starting aquaculture projects in the future.

#### **4.2.1.2 Aquatic charter**

- Aboriginal interests have expressed concern that the recently developed aquatic tour licences may become limited and Aboriginal interests may be shut out from

opportunities to become involved in the industry, as has happened with the commercial fishing industry.

- There are several existing Aboriginal tourism ventures that involve fishing.
- Aboriginal people have identified and feel they have a unique opportunity to provide fishing related tours that incorporate cultural information and information about 'country'.

#### **4.2.1.3 Commercial Fishing**

- Aboriginal people want access to commercial fishing licences to meet both economic development and social objectives including employment and self determination. Aboriginal groups have commonly voiced their strong links to fish resources and to many remote communities commercial fishing is one of the few opportunities available for economic self determination.
- Aboriginal people want a program for access to commercial licences to ensure they can gain economic benefit from the fish resources to which they have traditional ownership and responsibilities to protect.
- The cost of commercial fishing licences are too high for the vast majority of Aboriginal people or communities.
- Aboriginal communities that have been granted commercial fishing authorisations have learned that training, business planning and resources to obtain equipment are necessary for fishing ventures to succeed.
- Some larger Aboriginal communities have requested commercial licences to catch fish to sell only within the Aboriginal community and meet communal fishing needs.
- Aboriginal community groups have expressed the need to formalise and secure access rights around Aboriginal community fishing authorisations in order to be able to plan and take a long term view to the fisheries.

#### **4.2.2. Examples Of Issues Raised By Other Sectors**

##### **4.2.2.1 Western Australian Fishing Industry Council (WAFIC)**

*"The Aboriginal Fishing Strategy should operate as an integral part of fisheries management in Western Australia. The Strategy should build on established fisheries*

*management principles to establish effective opportunities within a rights-based framework. This will involve:*

- *Better integration of existing Aboriginal legal rights within a comprehensive fisheries management framework; and*
- *Development of opportunities for Aboriginal people within commercial fisheries in a manner consistent with the existing rights-based system.*

*The establishment of a rights based framework where industry takes a high degree of responsibility in fisheries management has resulted in a system that is open to a wide range of potential entrants. The ability to raise capital to enter commercial fisheries is enhanced by the security of rights in the overall system.*

*A sophisticated pool of expertise exists in commercial lenders to provide finance to those able to effectively utilise the economic value of the fishing rights. Combined with various special sources of finance for Aboriginal communities with viable economic proposals, access to capital to participate in the system is not a real issue.*

*Real barriers that impede Aboriginal participation in economic development are more likely to revolve around commercial considerations such as the development of skills and systems to enable Aboriginal interests to effectively exercise commercial fishing rights in a way both acceptable within an Aboriginal group and economically effective.*

*A significant additional benefit of the existing commercial rights-based system for Aboriginal interests is that participation within the system is likely to facilitate real co-operation with the holders of commercial skill and expertise. Participation outside the system will dissipate good will through long drawn out battles over ownership of commercial access rights.*

*WAFIC strongly rejects the creation of statutory quasi-commercial fisheries with special rights for Aboriginal people.”*

#### **4.2.2.2 Western Australian Aboriginal Native Title Working Group (WAANTWG) submission to the Aboriginal Fishing Strategy, 2001.**

*“There is significant opportunity to promote the economic benefits that Aboriginal people could take advantage of through the commercial licensing system and assistance with aquaculture initiatives. Commercial fishing is complementary with Aboriginal traditional lifestyle and culture and should be seen as an important avenue for assistance for enterprise endeavour.”*

### **4.3. Options**

#### **4.3.1 Support Services And Capacity Building**

It is well documented that as a group, Aboriginal people face many disadvantages in their attempts to compete successfully in business and achieve financial independence.

Many Aboriginal people and groups wishing to operate successfully in the fishing sector (including commercial fishing, aquaculture and aquatic charter tours) require not only the means to gain access to the industries, but support to assist them to be competitive within those industries. This support includes training, business planning, funding and administration.

There are a number of existing programs, funds and services available to assist Aboriginal people to overcome disadvantages they face in successfully competing in commercial ventures. These are provided by a number of government and non-government organisations including ATSIC, the Office of Aboriginal Economic Development, TAFE and the Department of Training. The fishing industry with its expertise built up over decades also has an opportunity to play a key role in Aboriginal economic development.

To ensure the best opportunity for Aboriginal people to succeed in fishing related enterprises, strategies to coordinate the provision of existing training, funding and planning services specifically targeted at Aboriginal interests that gain access to the fishing sector are required.

These strategies may include a Memorandum of Understanding between relevant service providers or one organisation playing a coordinating role for specific fishing related projects. The Office of Aboriginal Economic Development is a Government department that provides advice and assistance to Aboriginal clients wishing to initiate businesses and may be best suited to have a coordinating role in the integration of the services outlined above.

**Recommendation 28:** A coordinated approach to the identification and provision of relevant existing business, training and funding support services is developed specifically for fishing related economic development opportunities for indigenous interests. The Department of Fisheries and Office of Aboriginal Economic Development should play a key role in this process.

### **4.3.2 Social Objectives**

It should be recognised that many Aboriginal communities wish to meet social as well as economic objectives. Social objectives include providing training, employment and incentive - particularly for young people - providing opportunities to become more financially independent and reasons for community members to remain 'on country' or in communities.

It is also important to recognise that the long term economic success of Aboriginal interests in commercial fishing, aquaculture and aquatic tourism may flow from pilot projects Aboriginal communities develop themselves and have 'ownership' of, and that are based more on meeting social objectives than economic objectives. It is important to foster development of these programs, including support for funding.

Funding is often limited to those projects that are able to demonstrate an ability to meet economic objectives and returns in a relatively short period of time. In addition, proposals or projects developed by outside interests may not have the same level of 'ownership' required to sustain interest over the long term.

The WA Labor Policy Platform identifies the need to emphasise localised, small-scale economic programs for Aboriginal community training and employment.

**Recommendation 29:** In considering provision of support to localised small-scale fishing ventures, the level of support given should reflect the potential for the venture to grow into economically profitable operations and potential social outcomes such as training and employment.

### **4.3.3 Commercial Fishing**

Aboriginal people wish to participate in the commercial fishing sector for many reasons, including financial independence and self determination, employment opportunities, and the opportunities that involvement in the fishing industry can provide in terms of having a greater say in the management of fish resources.

The clear impediment to Aboriginal people wishing to participate in the commercial fishing sector is gaining access to commercial fishing authorisations. These are generally transferable, limited in number and as such gain a value that is determined by market forces. The value of commercial authorisations can range from tens of thousands to millions of dollars.

It is not possible to create new commercial fishing licences as most commercial fisheries are fully utilised, and any further fishing effort would jeopardise the sustainability of fish stocks.

Consultation has identified two commonly suggested options for Aboriginal people to gain access to commercial fishing licences, through buy-backs (reallocation) or by purchasing licences on the open market.

#### **4.3.3.1 Buy-back**

Buy-back programs have been used to reallocate commercial fishing licences to indigenous interests in other countries such as Canada. Buy-backs are used in Western Australia to remove commercial fishing authorisations from fisheries for the benefit of others, including recreational fishers, not to reallocate those authorisations to another commercial interest.

A buy-back to remove commercial fishing authorisations from existing licensees and grant them to Aboriginal commercial fishing interests is not a preferred option for the following reasons:

- Any reallocation of commercial fishing authorisations through a buy-back will require compensation to those that currently hold the authorisations;
- The process required to undertake such a buy-back scheme would be time consuming, potentially litigious, and requires significant administration;
- As buy-backs are generally voluntary there is little choice in which licences would be available. Usually it is only licenses that are the least economically viable which will be surrendered for buy back; and
- Such a scheme may result in a negative response from the commercial fishing sector. Support from the commercial fishing sector (e.g. industry infrastructure, processing, transport, training and other services) will be crucial to the success of any new Aboriginal fishing businesses.

#### **4.3.3.2 Open Market**

The preferred option for obtaining commercial fishing licences for the benefit of Aboriginal interests is through an open market process. Transferable commercial licences can be purchased and sold on the open market.

The use of existing market mechanisms instead of government intervention to gain access to the commercial fishing sector is preferred. This option is more likely to be generally supported by the commercial fishing industry, is consistent with the existing economic system that has developed and evolved in Western Australia, and there is greater choice in licences.



In order for indigenous interests to gain entry to licences on the open market, funding is required.

**Recommendation 30:** Any new allocation of commercial fishing authorisations to Aboriginal interests is administered through the open market process that has developed in Western Australia.

#### **4.3.4. Indigenous Fishing Business Fund (the Fund)**

An option to overcome the cost of entry into commercial fisheries is to establish a fund that can be used to purchase transferable fishing authorisations for the benefit of Aboriginal people.

The rationale for the establishment of a fund is consistent with:

- State Government Aboriginal Economic Development responsibilities and objectives, included in *A Strategy for Responsive State Government Services and Programs*, which states: “*the Government will assist in improving access to capital for Aboriginal economic projects*”.
- The *Commitment to a New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians*. In particular, recognition of the enduring legacy of economic and social disadvantage that many Aboriginal people face and that the continuing rights and responsibilities of Aboriginal people should be accommodated within the existing legal, political and economic system that has developed and evolved in Western Australia since 1829. That is, the establishment of a fund utilises the existing economic system of tradeable fishing authorisations and units on an open market system.
- The preamble to the *Native Title Act 1993* states that “*It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established to assist them to acquire land.*” This notion should extend to the purchase of commercial fishing authorisations.
- ATSIIC’s *Aboriginal and Torres Strait Islander Fisheries Strategy*, an outcome of the *Royal Commission into Aboriginal Deaths in Custody*, objectives of which include: “*to promote greater involvement of Aboriginal and Torres Strait Islanders in sustainable fishing and aquaculture activities*”.
- The WA Labor Policy Platform which includes: “*encourage economic development in indigenous communities to increase employment and decrease welfare*”.

*dependency; and identify and support commercial development opportunities for indigenous communities to encourage economic dependence, employment and training.”*

The fund requires a one-off establishment cost, and will continue to remain and hold value, either as cash or tradeable fishing units as its primary use would be to buy and sell tradeable items (transferable commercial fishing authorisations) that generally increase in value. It represents a low risk investment in Aboriginal economic development because the initial investment is not likely to depreciate and the investment should generally remain in the program in perpetuity.

**Recommendation 31:** An Indigenous Fishing Fund is created by the State Government to assist in the purchase of tradeable fishing authorisations on the open market for the benefit of indigenous Western Australians.

#### **4.3.4.1 Fund Contributors**

The establishment of a fund to purchase fishing business authorisations for the benefit of indigenous Western Australians is within the objectives and means of two key organisations, the State Government and the Aboriginal and Torres Strait Islander Commission (ATSIC).

In addition, the Indigenous Land Corporation, which administers the Indigenous Land Fund, has significant resources to purchase ‘land’. However, existing legislation under which the Indigenous Land Fund is established means the interests of the corporation cannot extend to water or include commercial fishing licences.

Other groups that may be able to participate in such arrangements include Indigenous Business Australia and the Commonwealth Government, which may wish to develop such a program on a national level, or contribute to State initiatives.

**Recommendation 32:** Contributions to the Fund be made by the State Government and the State seeks contribution on a matching dollar for dollar basis from the ATSIC. In addition, opportunities for partnership funding with Indigenous Business Australia and the Commonwealth Government should be explored. At a national level, it is recommended that the State Government seek a review and amendment of the *Aboriginal and Torres Strait Islander Land Fund Act* to allow for the purchase of fishing related authorisations through the Aboriginal and Torres Strait Islander Land Fund.

#### 4.3.4.2 Fund Administration and Allocation

Consultation with Aboriginal groups and interests identified a key issue regarding equitable allocation of funds for the purchase of licences. Many Aboriginal people wish to ensure decisions about allocating licences be independent of Aboriginal organisations and native title to ensure fair and equitable access to all indigenous Western Australians.

For example, concerns have been raised that if native title claimants are responsible for decisions about allocations of funds, there may be limited opportunity for Aboriginal people who are not native title claimants to gain access to the Fund. The Fund should not be limited to native title interests for the same reason the establishment of a 'special fund' is contained within the preamble of the *Native Title Act 1993*.

The establishment of a Fund to purchase commercial fishing authorisations for Aboriginal interests is established to meet primarily economic development objectives, and therefore decisions should be made primarily on business principles. Decisions based on Aboriginal community organisation priorities or native title may not allocate licences to groups with the best chance to succeed in a unique and competitive industry.

Both the Indigenous Land Corporation and Indigenous Business Australia have been established to address indigenous fund allocation issues and it is recommended that Government give consideration to the structure, function, legislative establishment and current policies of these organisations in the development of the proposed Indigenous Fishing Fund.

**Recommendation 33:** To ensure inter-indigenous community equity in any allocation process for the Indigenous Fishing Fund, Government consider the structure and functions of both the Indigenous Land Corporation and Indigenous Business Australia in the development of administrative and allocation structures relating to the Fund.

#### 4.3.4.3 Simplified Access to the Fund

Aboriginal interests request that access to the fund by Aboriginal people be simple and without unnecessary conditions. Aboriginal people have raised concern about numerous programs established for the benefit of Aboriginal people that end up under-utilised because there are too many conditions and processes put in the way, reducing incentive to access the scheme. One of the results is that those Aboriginal people or communities with knowledge of application processes and systems successfully gain greater access to services.

**Recommendation 34:** Any Fund application process is as simple as possible while ensuring accountability and transparency.

#### 4.3.4.4 Incentive and Ownership

There would be no guarantee of benefits to future generations of Aboriginal people if the Fund was used to buy transferable licences and grant them to Aboriginal interests (as opposed to an administrative body leasing them out), as those Aboriginal interests may choose to sell the licence on the open market for short-term gain. If licences are granted from the Fund, there will be a diminished capacity for the fund to provide opportunities for future generations.

However, there needs to be incentive and ability for Aboriginal interests wanting to develop interests in the fishing industry for the long-term to own fishing authorisations.

For example, if after a specified period of time an Aboriginal fishing venture that has leased a commercial fishing licence from the Fund demonstrates that it can operate independently, competitively and with long-term objectives in mind, it should be given the opportunity to purchase or be granted the authorisation, or a combination of both. This could be achieved by creating links for such opportunities between the Fund and existing schemes such as the Commercial Development Fund or Small Business Development Fund through ATSIC.

**Recommendation 35:** A loan/grant scheme be linked with the Fund to ensure those Aboriginal interests who are successful in running commercial fishing ventures through a lease arrangement from the Fund, and meet pre-determined performance criteria, have the opportunity to independently purchase licences through the loan/grant program.

#### 4.3.4.5 Ensuring adequate resources to utilise authorisations purchased through the Fund

There is no point having a fund to buy licences for Aboriginal interests if those interests do not have the capacity or infrastructure to work those licences. For example, a licence is not useful if there are insufficient resources to buy the necessary fishing vessel and fishing gear. With an integrated approach to the provision of services, these requirements should be identified and assistance made available as appropriate. However, existing services may not always be able to meet the needs of some fishing ventures.

It is likely that larger capital and operational items such as fishing vessels and gear will require additional resources. In this case, it is recommended that a portion of the Fund be isolated and made available for purchasing operating equipment that is not obtainable through existing support services.

This approach is consistent with the revised *2001-2006 National Indigenous Land Strategy* (Indigenous Land Corporation, 2002), which has as a key policy, “*when the Indigenous Land Corporation considers land acquisition proposals, initial and ongoing*

*costs are accounted for. This is so an integrated approach to economic development, maintenance and operational costs is achieved.”*

This portion of the Fund may be offered on a loan basis to ensure recovery of at least part of the fund used to purchase depreciating assets.

**Recommendation 36:** A portion of the Fund is made available for purchasing operating equipment necessary to the function of the fishing operation that is not obtainable through other existing support services and that this portion of the Fund is considered on a loan basis to allow partial recovery of resources used.

#### **4.3.5 Aboriginal Community Commercial Fishing Licences**

Aboriginal interests have a history of commercial access to mud crab, beche-de-mer and trochus resources, primarily as a result of a policy developed in 1989 by the then Minister for Fisheries. This policy was developed, and has continued to be used, to provide remote Aboriginal communities with opportunities to be more financially independent. A copy of these policy guidelines is available at Appendix 4.

This policy has allowed for, but not secured, access to trochus, mud crab and beche-de-mer fisheries by Aboriginal interests. As a result access by Aboriginal interests can be marginalised if these fisheries become fully utilised by other commercial fishers with secure access arrangements. This results in failure of the policy and Aboriginal economic development objectives.

It is recommended Aboriginal interests within Aboriginal Fishing Area 1 be granted explicit allocations in each of the fisheries currently covered by the Aboriginal community commercial fishing licence policy. This should be done in recognition of the importance of fish resources to Aboriginal people in Aboriginal Fishing Area 1, the history of the existing Aboriginal Community Commercial Fishing Licence Policy, Aboriginal economic development objectives, and the need for security of access to ensure longer term outlooks by fishery participants.

The review of access arrangements should address:

- **Transferability:** Transferability of these authorisations must be carefully considered as Aboriginal economic development objectives will not be met if Aboriginal interests simply sell licences to other commercial interests. Limited transferability within the Aboriginal community from one incorporated Aboriginal organisation to another is recommended. This will require legislative amendment to give the Executive Director of Fisheries grounds not to transfer an Aboriginal community licence to a non-Aboriginal community group and National Competition Policy issues will need to be considered.

- **Lease:** The Aboriginal Community Fishing Licence Policy precluded operators other than Aboriginal community members from utilising the licence, which prevents joint ventures and other beneficial partnerships from developing. Provision should be made for lease ability.
- **Application and assessment processes:** Including, for example, timeframes for application and assessments; who is able to hold authorisations; how many authorisations should be issued; and what is required for assessments (for example, business plans).

More specifically, each of the existing fisheries should be addressed in the following manner.

#### **4.3.5.1 Mud crab**

The mud crab fishery is a key economic development opportunity for Aboriginal people for the following reasons:

- Aboriginal communities or outstations are physically located in many cases to make best use of the fishery in terms of fishing operations, transport and access;
- The fishery is located almost exclusively in intertidal waters in Aboriginal Fishing Area 1, where it is recommended Aboriginal interests have enhanced input into the protection and use of fish resources through joint-management arrangements;
- The fishery is under-utilised. Although a small number of commercial operators have held mud crab authorisations for several years, there has been very limited fishing effort or catches in the fishery by those authorisation holders;
- Mud crab ventures do not generally require large start up or capital resources;
- Markets are established and mud crab is a relatively high value species; and
- Expertise is readily transferable from industry in the Northern Territory.

To achieve the optimum economic, social and other benefits from the use of fish resources (object of the *Fish Resources Management Act 1994*), assist in meeting Government Aboriginal economic development objectives and to be consistent with rationale for Aboriginal Fishing Area 1, it is recommended the mud crab fishery be fully allocated to Aboriginal interests.

#### **4.3.5.2 Beche-de-mer**

The beche-de-mer fishery has been heavily utilised for many years in the Kimberley. This, and high costs of entering the fishery has generally precluded Aboriginal interests from gaining access under the Aboriginal Community Fishing Licence Policy. Instruments of Exemption have been issued pursuant to the *Fish Resources Management Act 1994* and in line with the Aboriginal Community Fishing Licence Policy for the take of beche-de-mer in Shark Bay.

Aboriginal interests should be granted an explicit allocation to the fishery based on the principle that access is currently available under the Aboriginal Community Fishing Licence Policy, Government Aboriginal Economic Development Policy and recognition of the rationale for Aboriginal Fishing Area 1, where most of the commercial beche-de-mer fishery is located.

Government may wish to use the allocation framework proposed under the Integrated Fisheries Management Strategy (Integrated Fisheries Management Review Committee, 2000) to determine the allocation and how it should be implemented.

#### **4.3.5.3 Trochus**

The trochus fishery is a small but important fishery to the historical participants (primarily the Bardi and Jawi peoples) that provides income, employment and social benefits. In recent years much of the responsibility for compliance, education and decisions on new management arrangements have been transferred to managing organisations within the Aboriginal communities participating in the fishery, primarily the Bardi Aborigines Association.

This co-management approach has been developed in recognition of the customary stewardship responsibility of the Aboriginal people who participate in the fishery (a function of existing customary marine tenure) and the difficulties in providing compliance in the fishery as a result of its remote location.

The trochus fishery has been authorised by Instruments of Exemption under the *Fish Resources Management Act 1994* since the inception of that Act. Although these Instruments have permitted flexibility during the development of new management arrangements (including increased size limits and seasonal closures) and the devolution of management responsibilities under a co-management approach, they offer no security of access to the fishery.

It is recommended that the trochus fishery be appropriately authorised under the *Fish Resources Management Act 1994* to give greater security of access to the historical users of the fishery. The joint-management approach currently utilised to manage this fishery should remain and be formalised in an agreement between the Department of Fisheries and fishery participants.

**Recommendation 37:** Access by Aboriginal communities currently available under the Aboriginal Community Fishing Licence Policy is replaced as soon as possible with explicit allocations in Aboriginal Fishing Area 1. These explicit allocations should be transferable only amongst Aboriginal interests. Specific actions should include:

- An immediate review of the mud crab fishery with a view to reallocating all commercial mud crab access to Aboriginal interests; and

- Creation of a trochus fishery authorisation to secure access for historical participants in the fishery and formalisation of existing joint management arrangements.

#### **4.3.6. Aquaculture**

*A National Aquaculture Development Strategy for Indigenous Communities in Australia* (Lee and Nel, 2001), funded by the Commonwealth Government (Agriculture, Forestry and Fisheries Australia) and the Fisheries Research and Development Fund, contains a management framework and strategic plan for enhancing indigenous involvement in aquaculture in Australia. A summary of the recommendations of the strategy can be found at Appendix 1.

This report is supportive of the recommendations of *A National Aquaculture Development Strategy for Indigenous Communities in Australia*, and recommends that programs to develop aquaculture involving Aboriginal interests in Western Australia should be consistent with the Strategy.

There is significant work in progress in relation to Aboriginal involvement in aquaculture, particularly in the Kimberley, that has input from both ATSIC and the State Government, primarily through the Department of Fisheries. This includes the development of a multi-species hatchery in Broome and support for the Kimberley Aquaculture Aboriginal Corporation.

This report is also supportive of the work that is continuing with the Department of Fisheries in enhancing Aboriginal involvement in aquaculture in Western Australia. It is through the collaborative work undertaken by Department of Fisheries in the regions working and developing regional solutions with Aboriginal interests that effective outcomes will likely be developed.

This report will not attempt to expand upon the work already being achieved through these initiatives, but will provide some comment on key issues raised by Aboriginal interests as a result of consultation. Key issues are summarised below.

- There should be greater emphasis placed on fostering projects that have been initiated by, or developed with, Aboriginal interests, rather than developing projects and finding an Aboriginal community to take that project on board. Ownership of aquaculture ventures by Aboriginal people is very important in ensuring retention of long-term interest, vital to aquaculture development success.
- Some small-scale aquaculture projects may only aim at meeting social objectives (such as employment and training to community members) when they are initiated. Where these projects have potential for economic viability they should be fostered, even if profit can't be demonstrated in the short term, in line with the WA Labor



Policy Platform that identifies that it will emphasise localised small-scale economic programs for Aboriginal community training and employment.

- Joint venture or partnership projects, which are generally large scale, can benefit Aboriginal interests particularly where Aboriginal interests have land suitable for aquaculture. Joint venture interests provide expertise, finance and management, with benefits to Aboriginal interests being financial returns from the lease of land and the potential for employment and training. The Department of Fisheries may have a role in assisting Aboriginal communities to develop proposals for joint ventures to a stage where it is attractive to outside investors.
- The Department of Fisheries has a role in managing the expectations among Aboriginal interests about outcomes that aquaculture will provide in the short and long term by providing advice in initial stages of identifying projects as to realistic objectives.

**Recommendation 38:** Programs to develop aquaculture involving Aboriginal interests in Western Australia be consistent with *A National Aquaculture Development Strategy for Indigenous Communities in Australia* and emphasis be given to the provision of resources and support for Aboriginal aquaculture initiatives developed through collaborative approaches between Aboriginal interests and the Department of Fisheries.

#### **4.3.7. Aquatic eco-tourism and charter fishing**

Licences are required from the Department of Fisheries to operate aquatic tours. A number of Aboriginal interests have history operating aquatic eco-tourism or charter fishing operations. Several have applied under the new licensing regime.

Ministerial Policy Guideline Number 12 - *Assessment of Applications for the Granting, Renewal or Transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences* guide the Executive Director to consider a number of factors in relation to granting aquatic tour licences. It is recommended that Aboriginal interests that offer unique cultural fishing education and/or heritage services should be given additional consideration when applying for aquatic tour licences.

At this stage there is no impediment to granting aquatic tour licences that have a low impact on fish stocks. However, there is a limit on the number of licences available for fishing charters that target large numbers of fish for clients to take home. These licences may gain a value in the future as they are limited and transferable, much the same as commercial fishing licences. In this case the Fund established for purchasing commercial fishing licences should also be able to be used for purchasing aquatic tour licences.

The following options have been identified:

**Recommendation 39:** In relation to the aquatic charter industry;

- The Indigenous Fishing Fund also be available to purchase transferable fishing charter authorisations for the benefit of Aboriginal interests;
- Agreements between Aboriginal interests and fishing charter operators that include employment options be promoted; and
- Ministerial Policy Guideline Number 12 - *Assessment of Applications for the Granting, Renewal or Transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences* be amended to include provision for the Executive Director of Fisheries to give consideration to Aboriginal interests applying for charter licences that can offer unique cultural fishing, education and heritage services as part of the operation arising from traditional / cultural links to the areas concerned.

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## **APPENDIX 1 SUMMARY OF RECOMMENDATIONS AND CONCLUSIONS FROM PUBLISHED REPORTS ADDRESSING ABORIGINAL FISHING ISSUES**

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**Note:** the following are summaries of recommendations and as such may vary from the full recommendations of the relevant authors.

### ***National Reports***

#### **National Aboriginal Fishing Strategy Discussion Paper (Commonwealth Coastal Policy, 1996)**

The Aboriginal and Torres Strait Islander Coastal Reference Group provided a list of examples of reforms that the National Aboriginal Fishing Strategy could seek to secure:

- More flexible and culturally appropriate bag limits that cater to occasional major catches for cultural purposes, and allow for family members to provide subsistence catch to each other.
- Indigenous community controlled fisheries licences.
- Indigenous representation on species and fisheries management advisory committees.
- Designation of traditional fishing zones, for example, in marine protected areas and elsewhere.
- Greater resources for Aboriginal groups to actively manage, monitor and police fisheries activities in areas adjacent to Aboriginal-controlled land.
- Greater means of access of indigenous groups to commercial fishing licences.
- Cross-cultural awareness programs (and in the case of prospective fisheries managers – curriculum development) for fisheries managers, commercial and recreational fishers and the public, regarding indigenous ‘special interests’ in fisheries.

#### **Coastal Zone Inquiry – Final Report (Resource Assessment Commission)**

### **19.9 THE ROLE OF INDIGENOUS PEOPLE**

#### **Recognition of traditional rights**

Considerable conflict, including situations of undue harassment (as have arisen in some cases), will be avoided if governments and indigenous people can negotiate an agreement that recognises the importance of hunting, fishing and gathering in many indigenous people’s diets and cultures across Australia.

**R.17** The council of Australian Governments, in conjunction with representatives of land councils and other indigenous organisations, initiate a process whereby traditional hunting, fishing and gathering rights are recognised by governments and amendments are

made to laws and regulations to incorporate this recognition and provide mechanisms for resolving disputes;

In the interim, governments ensure that there are no unreasonable prosecutions relating to these matters under existing laws and regulations.

In this regard, the Inquiry deplores governments' lack of action in response to the recommendations of previous inquiries, in particular the Law Reform Commission's 1986 inquiry into the recognition of Aboriginal customary laws.

**R.18** In the event of failure during 1994 to negotiate satisfactory nationwide arrangements for traditional hunting, fishing and gathering rights, the Commonwealth enact legislation to establish national criteria for such rights;

The legislation be based on the principles, priorities and defamations recommended by the Law Reform Commission in its 1986 report on customary laws and be agreed through negotiations with the Aboriginal and Torres Strait Islander Commission and representatives and land councils and other indigenous organisations.

#### **Involvement in managing conservation areas**

There is considerable variation across Australia in the extent of involvement of indigenous people in the management of conservation areas such as national parks, marine parks and World Heritage areas. In view of the importance of land and coastal waters in indigenous society, there is scope for much greater involvement in the management of these areas.

**R.19** The Australian and New Zealand Environment and Conservation Council, in conjunction with the Aboriginal and Torres Strait Islander Commission and representatives of land councils and other indigenous organisations, establish criteria for the participation of indigenous people in the management of conservation areas, including national parks, marine parks and world heritage areas.

The criteria include provision for indigenous people's representation on relevant authorities and boards of management or equivalent bodies, and for the establishment of indigenous consultative committees to advise these bodies on issues that affect them.

The Commonwealth take the initiative in this process by amending the *Great Barrier Reef Marine Park Authority Act 1975*, in accordance with this recommendation and the recommendation of the 1993 Whitehouse report that the Authority be authorised to enter into formal management agreements with indigenous communities.

#### **Involvement in coastal zone management**

The Inquiry notes the important contribution that some indigenous communities make to coastal zone management. Steps should be taken to ensure that more indigenous communities participate effectively in the National Coastal Action Program.



**R.20** The Aboriginal and Torres Strait Islander Commission and the Australian Nature Conservation Agency, in conjunction with state resource management agencies;

- Support, extend and coordinate nationally the community ranger system by ensuring adequate, continuing funding of rangers and by helping local communities to resolve training, accreditation and authority matters;
- Support the establishment of agencies similar to the Kowanyama Land and Natural Resources Management Office to help indigenous communities manage those parts of the coastal zone they own or control;
- Review funding options for these initiatives, including the provision of additional Commonwealth and state funds, the negotiation of subcontracting arrangements with those resource management agencies that benefit from the initiatives, the earmarking of a proportion of the budgets of such agencies for supporting the initiatives, and the payment of fees and royalties by the users of resources in areas owned or controlled by indigenous people.

### **Involvement in policy processes**

As with local communities in general, the interests of indigenous communities need to be taken into account at any early stage in policy making relevant to coastal zone resource use.

**R.21** State and Commonwealth natural resource management agencies establish units to provide advice on indigenous interests as part of policy making mechanisms and consult with representatives of indigenous organisations and peak industry bodies in establishing these units.

The Aboriginal and Torres Strait Islander Commission ensure that land councils and other indigenous organisations in the coastal zone have sufficient resources to carry out their responsibilities effectively when administering procedures for development proposals.

### **Increased communication**

There is a need to improve communication and understanding between indigenous people and particular industries. The Inquiry commends the constructive work of the Mining Committee of the Council for Aboriginal Reconciliation.

**R.22** The Department of the Prime Minister and Cabinet provide full support for the Committee's proposed Joint Council on Aboriginal Land and Mining.

### **Fisheries strategy**

Although many uncertainties remain about the long term impact of the High Court's decision on native title, further exploration of the nature of customary marine tenure systems and traditional fishing practices is necessary if indigenous interests in fisheries management are to be recognised. Measures are also required to encourage self reliance and the economic development of marine resources among indigenous coastal communities.

**R.23** The proposed Ministerial Council on Forestry, Fisheries and Aquaculture, in conjunction with the Aboriginal and Torres Strait Islander Commission and representatives of land councils and other indigenous organisations, prepare an Aboriginal and Torres Strait Islander Fisheries Strategy.

The key elements of the Strategy be as follows:

- Assessments by all fisheries authorities of indigenous interests in fisheries for which they have responsibility. Such assessments should include a review of the nature and extent of continuing customary marine tenure and traditional fishing practices in each fishery and how these might contribute to fisheries policy and management; impediments to indigenous people's participation in commercial fishing; and the impact of commercial fishing on fishing for traditional purposes.
- Representation of indigenous people on advisory committees for all major fisheries (as recommended by the Ecologically Sustainable Development Working Group on Fisheries) and identification of means by which indigenous communities can participate in the management of local fisheries and marine environments in which they have a traditional interest.
- Measures to improve economic development and employment opportunities for indigenous communities in fisheries and mariculture ventures. Options include the reservation of a proportion of fishing or other licences for indigenous communities, the purchase of such licences on behalf of indigenous communities by the Aboriginal and Torres Strait Islander Commission, and the establishment of fishing zones adjacent to land owned or controlled by indigenous people in which communities could operate their own commercial enterprises, participate in joint ventures, or license access by other marine resource users.
- Measures to improve relations between indigenous communities, fisheries agency staff and commercial fishers, including cross-cultural awareness programs for agency staff and the organisation of local and regional workshops to discuss issues of mutual interest and concern.

Improved educational and training facilities for indigenous people are necessary to ensure that those wishing to take part in commercial fishing ventures are able to do so effectively.

**R.24** The Aboriginal and Torres Strait Islander Commission evaluate the experience of the Australian Centre for International Agricultural Research in supporting indigenous fisheries in the Pacific Islands, with a view to determining options for improving education and training among Australia's indigenous fishing communities.

This evaluation include assessment of the potential education value of the experience gained by relatively successful indigenous organisations such as the Tiwi Land Council on Bathurst and Melville Islands and Yirrkala Business Enterprises Pty Ltd in north-east Arnhem Land;

The Aboriginal and Torres Strait Islander Commission provide financial assistance and management training to indigenous people, to facilitate their participation in the commercial fishing (including mariculture) industry.

### **Cultural heritage**

Information about cultural heritage generally - that is, for both indigenous and non-indigenous people - is an important component of the information needed for integrated management of the resources of the coastal zone, and it is essential for ensuring that heritage values are adequately protected. At present, state heritage bodies, the Australian Heritage Commission, and some museums, universities and other bodies collect, store and generally facilitate the gathering of heritage information. Some indigenous communities have also compiled and hold detailed records relating to their sacred sites and other areas of cultural significance.

Issues connected with the ownership and control of cultural property requires resolution at inter-governmental level. Progress towards finalising an agreement between governments on cultural heritage protection is slow and the categories covered by the current draft agreement are very limited.

**R.25** The Australian Aboriginal Affairs Council, in conjunction with representatives of land councils and other indigenous organisations, speedily adopt a national policy on ownership of and access rights to indigenous cultural property, including places, objects and information.

It is essential that the recording of sites - both those that have value as material evidence of original occupation and those that embody the sacred and secular traditions of contemporary indigenous people - occurs in as many indigenous communities as possible, to ensure that other users of coastal zone resources take account of the presence and significance of such sites and traditions. Existing agencies have insufficient resources to carry out this task in a comprehensive and coordinated fashion. Moreover, indigenous people believe that local communities should control the process and the information. The Inquiry agrees with this.

**R.26** The Aboriginal and Torres Strait Islander Commission, the Australian Heritage Commission and the Australian Nature Conservation Agency, in conjunction with representatives of land councils and other indigenous organisations, review the role of Commonwealth programs and legislation in securing a national approach to recording and protecting indigenous cultural heritage;

The review is conducted with a view to establishing a national Aboriginal and Torres Strait Islander Heritage Council to provide funds and advice to local indigenous communities so that they can record and protect cultural heritage sites and information and to coordinate the activities of existing government agencies administering programs of this kind;

The review be conducted with a view to extending to other states provisions in existing Commonwealth heritage protection legislation that relate only to Victoria;

The review examined the option of this Heritage Council playing a central role in helping local communities to implement natural resource management initiatives.

### **National Aboriginal and Torres Strait Islander Rural Industry Strategy (ATSIC and the Department of Primary Industries and Energy)**

#### *Subsistence Fishing*

- Remove barriers to indigenous groups practising subsistence fishing

#### *Commercial Fishing*

- Encourage adoption of codes of practice by mainstream fishing enterprises that include return of bi-catch to traditional owners.
- Encourage extension of preferential licensing to indigenous people for collection of abalone, trochus, beche-de-mer and mud crabs in appropriate locations.
- Support reservation and buy back of fishing licenses where Aboriginal and Torres Strait Islander people have been excluded from the local commercial fishing industry.
- Assess the market opportunities for increased production and value adding by indigenous communities in relation to abalone, trochus, beche-de-mer, shark fins, rock lobster and mud crabs.
- Provide assistance to indigenous communities in establishing infrastructure for harvesting, storage, processing and transport of fishery products within the context of an enterprise plan.

#### *Fresh Water Fishing*

- Assist indigenous communities in gaining access to inland fishery resources for community use.
- Support initiatives to restock inland waterways for subsequent sustainable harvesting by indigenous communities

#### *Aquaculture*

- Recognise the interests of indigenous communities within the National Aquaculture Strategy.
- Provide technical support to indigenous communities wishing to plan for and establish aquaculture enterprises for community food supplies or for external sales.
- Assist the planning and establishment of aquaculture enterprises where they are likely to achieve significant economic benefits for indigenous communities, either in their own right or as a component of diversified production.

*Cultural Tourism*

- Support cultural tourism enterprises based on the heritage of rural industries where these can provide diversification of income sources, or increase the local range of viable tourist attractions.
- Support indigenous communities wishing to secure a position within the recreational fishing market, through promotion and marketing assistance and linkages to other tourism infrastructure.

*General*

- Provide assistance to indigenous communities in documenting traditional resource management practices that can contribute to contemporary mainstream best practices, including knowledge that relates to management of biological diversity, and promote equitable sharing of benefits derived from indigenous knowledge and practices.
- Promote recognition by fisheries management authorities that coastal Aboriginal communities are stakeholders with distinct and unique interests in fisheries.
- Encourage all fishery authorities to identify indigenous interests in each fishery, including customary marine tenure and traditional fishing practices.
- Promote understanding by fishery management authorities of the significance of coastal and marine environments and resources to indigenous communities, together with appropriate policies for co-management.
- Address the threat of impacts posed by some commercial and recreational fishing activities on fishery resources and marine sites valued by indigenous communities.
- Improve opportunities and appropriate support for Aboriginal people to become involved in fishery management processes, including representation on statutory and advisory committees at all levels.
- Promote mutual understanding of interests between indigenous communities, fishery agency staff and commercial fishers.

**Towards Greater Indigenous Participation in Australian Commercial Fisheries: Some Policy Issues**

**(ATSIC National Policy Office, Discussion Paper Series, Tsamenyi and Mfodwo, 2000)**

Outlines historical and current proposals for Aboriginal participation in commercial fishing including:

*The Second Report of the Woodward Aboriginal Land Rights Commission 1974*

This report raised the possibility that Aboriginal landowners might be allowed to license commercial fishers to use their waters.

*The Millar Committee's Review of Aboriginal Employment and Training Programs 1985*

This report recommended that:

- Favourable consideration, if not first preference, be given to Aboriginal groups in relation to commercial fishing, including exemptions from licensing requirements and sharing in royalties from fishing.
- Consideration should be given to allocating to the Aboriginal Benefits Trust Account, or similar organisations in the states and territories, a share in licence fees, royalties and other payments for exploitation of the natural resources of the environment.

*The Final Report of the Resource Assessment Commission, Coastal Zone Inquiry 1993*

This report focused on an overall Aboriginal and Torres Strait Islander fisheries strategy and suggested options as listed below:

- Reservation of a proportion of fishing or other licences for indigenous communities.
- The purchasing of such licences on behalf of indigenous communities by ATSIC.
- The establishment of fishing zones adjacent to land owned or controlled by indigenous people in which communities could operate their own commercial enterprises, participate in joint ventures or licence access by other marine users.

*Report of the Senate Select Committee on the Land Fund Bill 1995*

This report noted the large number of submissions made to it which advocated the buying back of leases and licences for oyster beds and fishing rights generally.

Conclusions:

- The current legislative framework in Australia does not support indigenous commercial fishing rights. The emerging debate on the negotiation of a treaty would seem to provide an opportunity to address indigenous commercial fishing issues.
- An enhanced access security regime for commercial fishers through the recognition of property rights may result in fisheries quota allocations. Recognition of indigenous commercial fishing rights will therefore require consideration of compensation for indigenous Australians who may be excluded from quota allocations.
- In addressing indigenous commercial fishing and related matters, indigenous Australians will need to consider issues around traditional ownership versus historical association within their communities.

**A National Aquaculture Development Strategy For Indigenous Communities In Australia**  
(Lee and Nel, 2001)

*Industry Development*

**Recommendation 1** Establish a small and highly focused Aquaculture Steering Committee to implement the recommendations provided in this study.

**Recommendation 2** Establish within ATSIC a small and specialised unit with significant aquaculture skills and experience.

**Recommendation 3** Explore the options that exist to integrate development planning strategies for indigenous aquaculture with planning for other complementary activities in the region.

**Recommendation 4** Consider the establishment of a working group or committee, comprising representatives of the state, ATSIC, regional councils and community members, to represent indigenous aquaculture interests in each of the identified biogeographical regions.

**Recommendation 5** Contemplate the best means whereby one or more multi-species hatcheries could be established in each of the biogeographical regions identified in this study and the means whereby appropriate synergies could be developed between them and existing Commonwealth and state aquaculture agencies.

**Recommendation 6** When appropriate, demonstration farms could be established in selected regions.

**Recommendation 7** Communicate to proponents the need for and encourage long-term commitments from individuals or communities interested in becoming involved in commercial aquaculture.

### *Physical Factors and the Environment*

**Recommendation 8** For any proposed aquaculture project, ensure a thorough assessment is carried out of the selected site to assess its physical, biological and ecological features and evaluate the relevant and social factors.

**Recommendation 9** Ensure that, for any proposed aquaculture project, culturally sensitive areas are not disturbed and due emphasis is placed on environmental management and sustainability.

**Recommendation 10** Explore the feasibility of using aquaculture to re-stock or enhance depleted fisheries and the means by which this practice could be most effectively established.

### *Biotechnical Factors*

**Recommendation 11** For each of the biogeographical regions, identify species that may be suitable for indigenous aquaculture and on which relevant research and development is taking place.

**Recommendation 12** In collaboration with existing Commonwealth, state, territory and regional research institutions, establish a means of focusing as well as extending research and development efforts on the special requirements of indigenous communities.

**Recommendation 13** Establish a means of translating the outcomes of research and development from national and regional institutions into practices that can be transferred to and realistically applied by indigenous people to aquaculture projects.

### *Commercial and Legal Factors*

**Recommendation 14** Establish a national network to develop and maintain links between indigenous people or communities involved in aquaculture and the commercial aquaculture industry.

**Recommendation 15** Develop a register of commercial institutions, organisations and individuals interested in becoming involved in the development of indigenous aquaculture.

**Recommendation 16** Establish a clear and transparent process that actively solicits support from the public and relevant industries for indigenous aquaculture to become major industry stakeholders.

**Recommendation 17** Encourage the formation of organisations that represent indigenous communities with common interests in aquaculture development. Establish a working group within each organisation to expedite the identification of suitable aquaculture land that could be developed.

**Recommendation 18** In each of the biogeographical regions, identify organisations and people who could act as mentors to communities interested in developing aquaculture.

**Recommendation 19** Develop a detailed document that identifies all organisations that might provide services, programmes and funding for indigenous aquaculture development initiatives and projects.

**Recommendation 20** ATSIC should develop a flow chart that clearly illustrates its funding process and shows the relevant time lines for funding aquaculture projects.

**Recommendation 21** Through its regional offices and in its relevant brochures, ATSIC should make it known that it would give strong preference to funding aquaculture projects involving groups of individuals and communities.

**Recommendation 22** Document and review the decision making and legislative processes currently in use by Commonwealth, state and territory governments in respect of indigenous aquaculture and suggest solutions where they might be needed.



**Recommendation 23** Encourage and foster cooperation, interactions and mutual trust between indigenous communities, regional councils, ATSIC, all funding bodies, the private sector and all Commonwealth, state and territory regulatory bodies.

### *Education and Training*

**Recommendation 24** Consider the establishment of a dedicated, nationally accredited indigenous training course, based on currently available and accredited national seafood modules.

**Recommendation 25** To provide the necessary guidance for indigenous people who wish to follow a career path in aquaculture, prepare a document that clearly explains the training and education opportunities that exist, as well as some details about education and training requirements and opportunities.

**Recommendation 26** Develop links with TAFE colleges, other relevant institutions and industry organisations that can provide skills based training courses for indigenous people and where appropriate, provide traineeships to the people to attend the course.

**Recommendation 27** Develop a job placement program to place trained indigenous people in commercial aquaculture projects.

### *Social and Cultural Factors*

**Recommendation 28** Prepare a document that provides an outline of how to do business and develop projects with indigenous communities, with specific reference to aquaculture.

## **State Reports**

### **Towards a Queensland and Torres Strait Islander Fisheries Strategy (Final Report to the Queensland and Torres Strait Islander Fisheries Strategy for Queensland, Smyth, 1999)**

#### ***Aboriginal involvement in commercial fisheries and aquaculture***

- QFMA, together with DPI, ATSIC and Aboriginal organisations and groups, should explore options and seek funds for the purchase of commercial licences for Aboriginal fishers.
- Industry and Government should provide information about opportunities for joint ventures with Aboriginal groups.
- DPI should undertake a study of opportunities for Aboriginal groups to become involved in commercial aquaculture ventures.
- The establishment of new Aboriginal commercial fisheries enterprises should not increase overall fishing effort.
- A percentage of income from commercial fishing should go towards financial support for indigenous fishing strategies.

#### ***Aboriginal training and employment strategies***

- QFMA and DPI should develop long-term Aboriginal training and employment strategies
- Training and employment of indigenous people in fisheries industry and fishery management should include recognition of prior knowledge, including traditional environmental knowledge.

#### ***Improving consultative arrangements***

- Establish a fisheries committee or organisation for the gulf and western Cape York Peninsula that is representative of all traditional owner groups.
- Investigate the establishment of an Indigenous Management Advisory Committee to provide advice on Indigenous fisheries issues on a statewide basis, supported by local and or regional advisory committees.
- Zonal Advisory Committee information days and information campaigns should be used to inform and consult with Aboriginal groups.
- Representatives from Fisheries authorities should visit Aboriginal communities to provide information on fisheries management, commercial fishing, aquaculture and research and to gain a better understanding of Aboriginal concerns and aspirations.
- Funding should be provided for a person to coordinate indigenous fisheries issues.
- Improvements should be made to consultations with Aboriginal groups regarding the development of fisheries management plans.
- Obtain funds to resource Aboriginal representatives to attend meetings and disseminate outcomes.

***Aboriginal involvement in fisheries research***

- The Indigenous Fisheries survey package, prepared jointly by DPI and Aboriginal groups, should be supported further.
- DPI should inform traditional owners of research aims and consult them before entering areas in which they wish to do research.
- Traditional knowledge should be incorporated into any research project.

***Recognition of Native Title and Traditional Law***

- Fisheries Legislation should include recognition of Aboriginal traditional law.

***Regional agreements and MOUs***

- Establish a set of protocols, or code of practice, approved by traditional owners, for commercial and recreational fishers to follow when fishing.

***Protection of Aboriginal cultural sites and knowledge***

- Marine management and research agencies should adopt ethical principles on Aboriginal cultural rights and interests.
- Fisheries and marine management agencies should protect Aboriginal cultural sites as part of planning and management, in conjunction with traditional owners.
- Negotiate, establish and implement Aboriginal Management Zones to protect Aboriginal cultural and economic interests.

***Marine Parks and Conservation***

- Tourism operators should be obliged to get clearance from traditional owners before making an application for permits from government agencies.
- Aboriginal community rangers should be given law enforcement powers for marine environmental and resource management.

**NSW Indigenous Fisheries Strategy Working Paper  
(NSW Fisheries, 2000)**

***Accommodation of traditional Indigenous fishing practices***

- Issuing permits or changing regulations to allow exemptions for the use of certain low impact fishing gear.
- Establishing closures or management rules on sites that are recognised as significant to protect traditional indigenous fisheries.
- Establishing closures on particular species for harvest by indigenous people only.
- Issuing permits to allow possession and bag limits to be exceeded for certain species, areas or periods, for individuals and communities.
- Supporting new and existing research into traditional fisheries, ecological knowledge and traditional use of fishery and aquatic resources would provide a foundation for action.

***Declining participation of Aboriginal people in commercial, recreational and aquaculture fisheries.***

- Facilitating shares purchases from existing shareholders could assist relocating lobster and abalone shares to community groups to be fished by indigenous commercial fishers.
- Additional shares and endorsements in other fisheries could be reallocated from existing entitlement holders. To ensure resource sustainability this would involve purchasing fishing businesses from existing owners.
- A review of the current resource harvesting strategies could be undertaken to identify opportunities for Aboriginal participation without the need for any entitlement re-allocation. For instance it has been suggested by Aboriginal groups that:
  1. Bimbulas (blood cockles) are under utilised, are only of small interest to existing commercial fishers, and could form the basis of a sustainable indigenous commercial fishery;
  2. If a new category of indigenous commercial fishery was created, the current ‘technically illegal’ take of abalone and rock lobster could be quantified and controlled by leaders in the indigenous community to create a legal opportunity with no increased resource impact;
  3. Area denuded of abalone by over-harvesting and therefore of no interest to current commercial fishers, could be vested as Aboriginal only areas for abalone ranching;
  4. Some under utilised species such as Australian salmon could become a useful base for boutique style value added processing in a small artisanal fishery and processing venture that used local community labour and resources;
  5. Expansion of the fishery for gathering beach worms and pipis for bait for recreational fishing could be a viable and sustainable scheme; and
  6. Extensive aquaculture (ranching) of black bream, snapper and prawns in intermittent lagoons on the south coast would be a viable scheme.
- In relation to aquaculture, Government’s role is to facilitate investment and partnerships and ensure that Aboriginal groups receive appropriate levels of involvement, training and support.

***Insufficient meaningful presence and participation of Aboriginal people in the process of managing and conserving fisheries***

- Consultation with indigenous communities and existing indigenous representatives on MACs and advisory councils is needed to identify the reasons for low retention of indigenous representatives on committees and to develop an approach to overcoming the problems.
- A program like the Fishcare Volunteer Program could be established to work within indigenous communities to identify, use and pass on indigenous knowledge for managing, protecting and conserving fish habitats in their area.
- Employment of Aboriginal people for policy, advisory and extension work may assist in providing information on regulations, management plans and research results to indigenous communities in a culturally appropriate way.

- The establishment of an advisory council or a committee for indigenous fisheries issues has also been suggested.

***Need for better communication and consultation with Aboriginal people***

- The employment of staff to assist with Aboriginal liaison may help to conduct cross-cultural training for Fisheries officers and work with Aboriginal fisheries officers to improve the accessibility of fisheries information for indigenous communities.
- The establishment of an Indigenous Fisheries Committee could help with the ongoing application and refinement of an Indigenous Fishing Strategy, as well as being a forum for cross sector liaison.

**Integration of Native Title interests in fishing and coastal management in Western Australia**

**(National Native Title Tribunal Research Report, Wright and Sparkes, 2002)**

***Customary Fishing***

- Establish within the *Fish Resources Management Act 1994* that customary fishing practices are legal when sanctioned by relevant Aboriginal custodians. The existing native title system seems the most appropriate way of establishing whether a person has a right to customary fishing. People with existing claims, or who have been determined to hold native title, and/or their customarily invited guests, would be able to fish by customary rules. Making the right to fish in a customary way contingent on being a member of, or a guest of, a native title group, seems sensitive to the High Court's understanding of the law in Australia (Croker).
- Where the Department of Fisheries, or the Aboriginal native title group, have a concern about sustainability, there could be a consultative process set out in an Indigenous Land Use Agreement (ILUA) which would specify an agreed course of action to address it.
- Issues of perception, perhaps where Aboriginal fishers are noticed by recreational fishers who think they are taking an unfair share of a limited resource, could be dealt with through existing, mediation based, mechanisms such as the guidelines for voluntary resource sharing process.

***Commercial Fishing***

- Aboriginal people to participate as licence holders in existing fisheries by buying into them.
- Sponsor a buy out of existing licences with the express purpose of transferring this fishing capacity to Aboriginal people – either through an industry levy of some form, or a government buy-back and redistribution. Some issues are outlined for this option.
- Development of new fisheries

***Aquaculture***

- National Aquaculture Development Strategy for Indigenous Communities in Australia

***Some Possible Funding Sources***

- ATSIC – in particular its Commercial Development Corporation (CDC) that has a capital base of \$60 million and has been established to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency.
- Indigenous Land Corporation (ILC) – established by the *Native Title Act 1993* and now covered by Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*. By 2004 the land fund will be valued at about \$1.3 billion. ILC's legislation should be altered to allow it to buy into sea-based interests.
- Fisheries Research and Development Corporation (FRDC) “there are significant opportunities to apply for funding that would enhance Aboriginal participation in fisheries. For example, the FRDC is currently providing some funding for the WA Aboriginal Fishing Strategy”.

More reports that contain recommendations relating to indigenous fishing are contained in the Bibliography and Further Readings sections of this document.

## APPENDIX 2 FISHERIES RESOURCE MANAGEMENT IN WESTERN AUSTRALIA

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The sustainability of fish stocks and conservation of their habitats are a desired Government outcome reflected in the *Fish Resources Management Act 1994* (FRMA). To that end, the Department has one key outcome: conservation and sustainable development of the State's fisheries.

The Department of Fisheries manages the State's commercial and recreational fisheries, develops and promotes the State's aquaculture industry, and manages and conserves fish and fish habitats. In doing so, the Department has five key objectives that are consistent with the objects of the *Fish Resources Management Act 1994*. These are to:

- Uphold the harvesting and fishing and fisheries resources at ecologically sustainable levels;
- Maximise the economic, social and other benefits derived from Western Australia's aquatic biological resources;
- Increase the level of understanding of, and support for, strategies used by the Department to manage the State's fisheries resources;
- Minimise adverse human impact on the aquatic environment; and
- Assign access to aquatic biological resources in accordance with community priorities.

The extent to which these objectives are met is reported through performance indicators contained in the Department's *Annual Report*. These indicators are underpinned by the annual *State of the Fisheries* report prepared by the Department's research division.

In fulfilling and meeting its objectives to ensure the conservation and sustainable development of the State's fish resources and the protection of fish habitat, there are a number of significant issues and trends to be addressed in the short to medium term. These include;

- Increased public requirement for accountability in respect to the maintenance of biodiversity and the ecologically sustainable use of the marine environment.
- Additional pressure placed on inshore fish stocks as a result of continuing population growth, coastal development, improved access and fishing technology, together with a growing recreational sector.
- The development of high-quality recreational fisheries and low-impact eco-tourism experiences in some regions to meet increasing community interest and tourism potential.
- Direct involvement of the Commonwealth in the day-to-day management and planning of Western Australia's marine environment through the implementation of the Commonwealth's Oceans Policy initiative.
- Indigenous fishing issues and the development of the law in respect to native title.

A number of major initiatives, including the Aboriginal Fishing Strategy, have been initiated to address these issues and trends. These initiatives include:

### **ECOLOGICALLY SUSTAINABLE DEVELOPMENT (ESD)**

Ecologically sustainable development (ESD) is the concept that seeks to integrate short and long-term economic, social and environmental effects in all decision making. It therefore represents a fundamental shift in public policy because it affects all government departments and agencies to some degree. The Department is committed to implementing ESD.

ESD is now accepted as the foundation for natural resource management in Australia and is a major component of all fisheries legislation at both state and Commonwealth levels. Additionally, these principles are consistent with a number of international treaties and initiatives such as United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Code of Conduct for Responsible Fisheries.

Within Western Australia, the objects of *the Fish Resources Management Act (1994)* (FRMA) are fully consistent with the ESD objectives and guiding principles. The objects cover issues related to the environment, social and economic components, their integration and the aspects of governance that enable the appropriate outcomes to be achieved.

The pressures to introduce ESD principles into fisheries management have come from both within and external to the fishing sector. Within the fishing sector, incorporation of ESD has been a long-term objective of all of Australia's state and Commonwealth fishing authorities. The Department of Fisheries has been progressing ESD since sustainability was embodied as an objective in the FRMA. This allowed the Department to take a more pro-active role in the sustainable management of marine, estuarine and riverine ecosystems and to establish a dedicated Fish and Fish Habitat Protection Program.

More recently, there has been external pressure placed on the fishing sector to hasten progress to address ESD. This pressure has stemmed from the new Commonwealth legislation specifically the amendment to Schedule 4 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* [now incorporated in the *Environment Protection and Biodiversity Conservation Act 2000* (EPBCA)]. This resulted in the blanket exemption of marine species being removed and now only species, which are harvested in an ecologically sustainable manner, are to be given an exemption for export.

The Department is currently in the process of developing ESD reports to ensure that marine fishery species are harvested in a sustainable manner and therefore remain on the export list. These reports include assessments of the environmental and governance components of ESD for all commercial fisheries. In addition, the Department has begun the assessments of the economic and social aspects of the State's major fisheries. After the ESD assessments are done for the commercial fisheries, the Department will begin the assessment of recreational fisheries and aquaculture industries.



Success in the implementation of ESD principles and practices across all sectors of the State's fisheries will be a 'world-first'. To date, this has not been achieved across any industry in the world.

## **INTEGRATED FISHERIES MANAGEMENT**

Historically, fisheries management in Western Australia has been based on meeting the management requirements of each sector or user group, without necessarily taking into account the overall impact of these user groups on fish stocks or their environment. A sectoral-based approach to management has been used successfully in Western Australia to date and most stocks are still in good condition by world standards.

However, the majority of fish stocks are now fully exploited and under increasing pressure from a growing population, coastal development and the demands of competing user groups. Similar scenarios elsewhere in the world have seen many fisheries go into decline, or fail completely. Fortunately, Western Australia still has time to develop a system that will ensure the long-term sustainability of fish stocks and satisfy the requirements of a wider ESD approach.

In March 2000, the Department initiated a new holistic approach to the management of Western Australia's coastal fisheries and fish habitats - the Integrated Fisheries Management Strategy (IFMS). A discussion paper was published "Protecting and Sharing Western Australia's Coastal Fish Resources - the path to integrated management", a copy of which is available on the Department's website at [www.fish.wa.gov.au](http://www.fish.wa.gov.au).

The IFMS will enable a wide variety of interest groups - commercial fishers, recreational fishers, Aboriginal and conservationist - and the wider community to be involved in planning the future of Western Australia's coastal fisheries and fish habitats, and includes extensive community consultation across the State.

Although there appears to be widespread support for the new management concept, a number of important issues have been raised, highlighting the complexity of the committee's task. These include:

- How do we determine the initial allocation of fish resources between user groups?
- How do we ensure that the system is fair to all?
- How are future re-allocations of resources made?
- Who should determine initial and subsequent allocations?

Each of these issues gives rise to many other questions in areas such as ESD, historic precedent, market forces, wider planning processes and changing community expectations and attitudes.

## **SECTORAL INITIATIVES / ISSUES**

While a new integrated management framework outlined above will guide the fish resource allocation process in the future, it will still be necessary to have effective sectoral management arrangements in place. In fact, past success in fisheries management has been based on the ability to develop effective arrangements on a sector by sector basis. A sample of sectoral management issues and initiatives is provided below.

### **Commercial Fisheries Management**

The introduction of limited entry management approaches in 1963 for the Shark Bay Prawn Fishery and the Western Rock Lobster Fishery replaced the open access arrangements previously in place and commenced modern commercial fisheries management in Western Australia. Subsequently, the number of commercial fishing boat licences was frozen in 1983. Since that time there has been a planned approach to bring all commercial fisheries under specific management arrangements. There are now in the order of 33 managed fisheries representing 98 per cent of the commercial production value.

The systematic declaration of managed fisheries has concentrated the remaining commercial fleet onto stocks and areas where fishing access has remained unrestricted. This has been ameliorated to some extent through the removal of a significant number of fishing boat licences by general buy-back and specific fisheries adjustment schemes. There are however a number of fishing boat licences that do not have access to fish stocks subject to a specific management plan. These licences only have access to the 'wetline' sector, which largely comprises the demersal finfish resources of the west coast, mackerel, whitebait as well as a few unmanaged bait stocks. A process is currently being considered to develop more formal management of the wetline sector.

The effectiveness of management is assessed through the annual review of the percentage of fisheries that have catches (or effort levels in quota managed fisheries) within their acceptable range. This performance indicator (i.e. acceptable catch range or effort levels) is reported annually in the *State of the Fisheries* report and annual report.

The Department's success in commercial fisheries management is best highlighted by the Western Rock Lobster Fishery. This fishery is widely recognised as one of the best managed fisheries in the world and is Australia's most valuable single species fishery, at a value of \$300 to \$400 million annually. In March 2000 it became one of the first fisheries in the world to receive certification from the Marine Stewardship Council (MSC).

The MSC accreditation process is now also paving the way for the fishery to meet its requirements in demonstrating ecological sustainability to Environment Australia – a necessary requisite for all future export fisheries under EPBCA. The foundation of this success was a management package introduced by the Department in 1993/94 to rebuild

severely depleted breeding stock. In 1997/98 and 1999/2000 these management measures resulted in bumper catches and economic prosperity for commercial fishers and the State.

### **Recreational Fisheries Management**

The first comprehensive management framework for recreational fishing was developed during 1989 and 1991. Major outcomes from the review included a statewide set of daily bag and size limits for all fish species and the establishment of management, research and community education programs for recreational fishing.

Now, over ten years later there has been significant change in Western Australia's recreational fisheries including increased participation and advances in angler efficiency through improved technology and more pressure on limited resources from competing users. With extra pressure of fish resources, various fisheries issues have arisen in different parts of Western Australia that have required modification, on a reactive basis, to management arrangements.

To manage pro-actively for the future, the Department, in consultation with the community, is developing four regional recreational fisheries management strategies for the State. The basis for a more regional approach is due to the acknowledgement of the natural complexity and diversity of Western Australia's marine life and environments and the need to better link management to the biology and distribution of fish stocks and fishing activity.

The recreational fishing management regions are the Pilbara/Kimberley, Gascoyne, West Coast and South Coast. Plans for the Gascoyne and West Coast have been developed for community consultation and a management framework is expected to be finalised during 2002/03. Plans for the Pilbara/Kimberley and for the South Coast will follow. Copies of plans are available on the Department's website.

The Department has also recently finalised arrangements for licensing and management of the charter fishing sector. Aquatic charter operators provide a service to fee paying customers to take them fishing. They offer a quality experience to customers (recreational fishers) by enabling fishers to obtain relatively high catch rates of quality fish or access to valued (while generally inaccessible) fishing grounds. The aquatic eco-tourism sector has experienced significant growth in the last ten years and specific management is necessary to complement the Department's broader recreational fisheries management initiatives.

### **Fish and Fish Habitat Protection**

The maintenance of a healthy aquatic environment is crucial to the commercial and recreational, pearling and aquaculture industries. The sustainability of fish stocks and conservation of their habitats is a desired Government outcome and are reflected in the objectives of the FRMA, which provide for:

- Conservation of fish and the protection of their environment;

- Exploitation of fish in a sustainable manner; and
- Management of Fish Habitat Protection Areas and the Abrolhos Islands.

The Department has established a Fish and Fish Habitat Protection Program, which works with other Departmental Programs, divisions, regional offices, the fishing industry, conservation groups and the wider community to achieve these objectives.

Specific initiatives in the marine environment include the establishment of Fish Habitat Protection Areas (FHPAs) to protect areas of special significance. To date, FHPAs have been established at the Abrolhos Islands, Lancelin Lagoon and Cottesloe Reef. In addition, the program is developing a series of Fisheries Environmental Management Reviews (FEMR) that document on a region-by-region basis, all fisheries and fishing activity in Western Australia's marine waters out to the 200 nautical mile Exclusive Economic Zone (EEZ) boundary.

The FEMR documents (and subsequent Management Plans) will take a 'first look' at the possible effects of Western Australian fisheries on the environment, as well as noting any external pressures and threats to each fishery and the habitats that support them. In particular, they will provide a 'blueprint' for future environmental management for the Department and provide an opportunity to look at fishing in terms of a broader ecosystem framework.

A FEMR has been published for the Gascoyne region, a copy of which is available on the Department's website. Further reviews will be published over time.

While the biodiversity of marine fish populations in Western Australia is in good health and in general supported by healthy habitats, there is concern about the status of the freshwater fish populations, particularly in the South West corner of the State. In the South West, habitat degradation of fresh water systems has occurred because of salinity, catchment clearing, point source pollution, eutrophication, silting and the loss of riparian vegetation.

Collaboration with other agencies is essential since the Department does not have jurisdiction for catchment and land management, which management greatly affects fish stocks.

### **Pearling and Aquaculture**

The pearling industry based on the silver or gold-lipped pearl oyster, *Pinctada maxima*, is Western Australia's second most valuable commercial fishery and Australia's largest aquaculture sector. The industry was worth over \$190 million in 1999/00. Industry management objectives involve sustaining the pearl oyster wildstock and optimising return to the community. The harvesting of wildstock pearl oysters is controlled by a total allowable catch and by individual quotas. Production levels are also controlled through quotas on the number of hatchery oysters that can be seeded for round pearl production.

In addition to pearls and with the harvest of wild capture fisheries worldwide generally at maximum sustainable levels, the Department has continued to place a high emphasis on developing aquaculture industries. Aquaculture has a substantial role to play in the production of seafood and other quality products. Major species under commercial production include mussels, yabbies, marron, pearl oysters (other than *P.maxima*) and algae for beta-carotene extraction.

The Department is committed to the sustainable development of the pearling and aquaculture industries. Current management issues relate principally to 'sharing space' as opposed to 'sharing fish' and environmental performance. These issues have been addressed in more detail in the Department's recent submission to the Government's Independent Review Committee on the project development approvals system in Western Australia (refer Attachment 1). Specific issues concerning marine planning are also addressed in section 6 below.

## **MARINE AND COASTAL PLANNING**

One of the difficulties facing aquaculture and the fisheries sector generally, in the marine environment is the common property nature of marine resources and poorly defined user rights. There is increasing pressure on the marine environment from a variety of users, including those in the aquaculture, fishing and tourism sectors together with a growing community desire for unfettered access to the marine environment and for conservation of important areas, habitats and species.

For certain types of aquaculture, there is a shortage of high quality marine sites. Suitable sites tend to be in high use areas and close to major townsites. This often results in a high level of conflict between aquaculturalists and other users and the general community. There is also a degree of uncertainty with respect to native title in the marine environment although this has been mitigated to some extent by the *Croker Island* High Court decision.

Currently, a number of State agencies undertake planning work in the marine environment. The Department of Conservation and Land Management prepares plans for marine nature reserves, marine parks and marine management areas. The Department of Fisheries prepares fish habitat protection areas plans, aquaculture plans, fisheries management plans, regional recreational fishing management plans and fisheries environmental management plans. The Water and Rivers Commission prepares waterway management programmes for estuaries and inlets. The Department of Planning and Infrastructure plans for port and harbour development and marine safety. The Department of Mineral and Petroleum Development plans for resource development in State waters. Because of the vast area of WA coastal waters these activities have been able to occur in the past with limited conflict but as the development and use of coastal waters increases greater conflict will occur in the absence of any integrative framework.

While agencies and interest groups work together to integrate their activities there is no legislative framework for planning in the marine environment. In addition, existing land use planning processes for coastal lands often do not integrate the use of coastal land and the use of the adjoining marine environment. Since expectations for the use of the coastal and marine environment are diverse, this shortcoming will lead to increasing conflict between users as the development of the State intensifies.

In addition to State-specific issues, there is the additional complication of Commonwealth legislation. The Commonwealth has a significant interest in the marine environment underpinned recently through its Australia's Oceans Policy (AOP) and the EPBCA and is expanding its interests into areas previously left to the jurisdiction of the State. The AOP has been prepared with a view to meeting some of Australia's obligations in managing the Exclusive Economic Zone (EEZ) under the United Nations Convention on the Law of the Sea (UNCLOS).

One of the cornerstones of AOP is the development of Regional Marine Plans based on large marine ecosystems. The first of these plans is currently being prepared for the south eastern region of the EEZ and it is anticipated the Commonwealth will move to prepare a Regional Marine Plan for a portion of the EEZ adjoining Western Australia in the near future.

## **INPUTS INTO THE MANAGEMENT PROCESS**

### **Compliance and Education**

The major driver for the management of fisheries resources is human behaviour. Thus whilst the objectives of fisheries management are directed towards sustaining fish stocks, what is actually managed is the behaviour of individuals undertaking fishing activities. Compliance by fishers with fisheries laws is essential to the integrity of the systems that manage fisheries and therefore critical to achieving sustainability. Compliance programs underpin the success of fisheries management schemes because non-compliance affects the attainment of biological, economic and social objectives.

The success of any fisheries management system depends on attaining optimal levels of compliance with fisheries laws. This is best achieved by maximising voluntary compliance and by creating an effective deterrent against illegal fishing.

Elements critical to achieving optimal levels of compliance include:

- Maintaining productive working relationships with stakeholders;
- Collaborating with fisheries stakeholders to develop and implement fisheries policies and laws;
- Ensuring that fisheries laws are administered and enforced fairly, reasonably and cost effectively;
- Working with fisheries stakeholders to identify compliance risks and developing compliance strategies, systems and services to lessen those risks;

- Supporting the co-management of fisheries with stakeholders who can be held accountable for meeting their duties and obligations;
- Delivering criminal enforcement services; and
- Maintain the integrity of its people, processes, systems and decision making.

The Department operates a State-wide compliance program that aims to maximise compliance with fisheries laws. Annual expenditure on enforcement is around \$7 million for commercial fisheries (including pearling) and \$3.5 million for recreational fisheries. A large proportion of costs incurred through enforcement of commercial fisheries and pearling are cost-recovered from industry. The majority of recreational enforcement costs are borne by the State.

The Department also places strong emphasis on education as a component of its overall compliance program and to meet its objective of maximising voluntary compliance with fisheries laws. The Department's key message of *'Fish for the Future'* is communicated to the community through strategic campaigns, including television advertising, the Department's highly successful Website and a large amount of printed material targeted at specific groups. The Department's education program is also strongly supported by a large number of Volunteer Fisheries Liaison Officers.

## **Research**

The Department's fisheries research division provides the expert scientific advice and research information necessary to manage, monitor and develop the State's extensive fish resources.

Research on wild fish stocks is undertaken by scientists working in collaboration with commercial fishers who provide statutory monthly catch and effort records. A large number of skippers also voluntarily complete detailed research logbooks. Similarly, many recreational fishers provide voluntary catch records to the division, which are supplemented by extensive surveys of recreational catches. These data, together with fishery independent research surveys, enable the division to maintain the comprehensive research databases needed for management of the State's harvested fish stocks.

Research on aquaculture development and associated environmental management issues is undertaken in collaboration with industry.

The outputs provided by the Division include:

- Scientific knowledge for the sustainable management of the State's wild fish stocks and associated commercial and recreational fisheries;
- Maintenance of long term databases to support scientific assessments of fish stock and their habitats;
- Strategic research knowledge on aquatic species and their environments for managing aquatic environments and ensuring quality of the State's fish products; and

- Development of new techniques and basic knowledge to add to the community's understanding of aquatic resources and their environment.

Research information and data is essential for the effective implementation of ESD across the State's fisheries and aquaculture sector.

## **Policy**

The Department has operated a dedicated fisheries policy unit since the mid 1980s. Policy formulation is based substantially on research and compliance input together with industry and community consultation. The Department operates a formal system of consultation, through the use of Management Advisory Committees or through formal meetings with relevant sectors. Currently the structure of the policy unit mirrors the Department's four output areas with programs established in the areas of Commercial Fisheries, Recreational Fisheries, Pearling and Aquaculture and Fish and Fish Habitat Protection.

## **Reporting and Auditing**

The Department reports annually to Parliament through its *Annual Report* and also produces the *State of the Fisheries*. The *State of the Fisheries* reports in detail on the activities and impacts of the commercial and recreational fishing sectors, which utilise the wild fish stocks in Western Australia. In addition, the status of the developing aquaculture industries is recorded to enable the public of Western Australia to follow the development of this emerging sector.

The work of the Fish and Fish Habitat Protection Program, which provides environmental coordination for the Department's fisheries management activities and habitat reserves, is also reported to complete the coverage of the Department's responsibilities.

The document summarises management changes, compliance activities and research data including stock assessments and breeding stock levels, and provides a valuable reference point for Western Australian fisheries. This report has also been subject to periodic scrutiny by the Auditor General.

A copy of the 2001/02 *State of the Fisheries* report is available on the Department's website.

Aside from its statutory reporting, the Department is also developing a process for reporting to the people of Western Australia on issues associated with Ecologically Sustainable Development (ESD) in fisheries. This will involve working with the EPA to prepare a framework for reporting on ESD for all Western Australian fisheries. This framework will be linked to a regular audit cycle involving the EPA and periodic reporting to the office of the Auditor General.



## **APPENDIX 3 CONSULTATION PROCESS**

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The consultation process undertaken with Aboriginal interests in Western Australia between March 2001 and September 2002 achieved a number of outcomes in addition to the identification of fishing issues and aspirations of Aboriginal interests throughout the State.

It was used as an education strategy about fisheries management in Western Australia and key fishing messages such as fishing for the future, which was found to be consistent with Aboriginal custom. Further, it provided the Department of Fisheries with the opportunity to learn and generally increase its understanding and awareness of Aboriginal fishing. One of the most direct outcomes was the identification and development of strategies to improve consultation with Aboriginal interests about fishing matters.

The methods used to undertake consultation are outlined below.

### **Aboriginal Fishing Strategy Working Group**

#### **Representation:**

- Independent Chairperson;
- Aboriginal and Torres Strait Islander Commission (ATSIC);
- Commission of Elders;
- Conservation Council of WA;
- Department of Fisheries;
- Department of Indigenous Affairs (DIA);
- Indigenous Land Corporation (ILC);
- Office of Aboriginal Economic Development (OAED);
- Recfishwest;
- Recreational Fishing Advisory Committee (RFAC);
- Western Australian Fishing Industry Council (WAFIC); and
- Western Australian Native Title Working Group (WANTWG).

Executive support provided by the Department of Fisheries.

#### **Terms of Reference**

- To provide advice on development and implementation of recommendations for the Strategy, including legislative and policy changes;
- To identify commercial opportunities for Aboriginal communities through the use of fish resources, ensuring that maximum economic development, stock sustainability and biodiversity objectives of Fisheries WA are met;
- To encourage a collaborative approach across agencies, government and industry;
- To provide advice on the inclusion of social and cultural aspects of traditional fishing practices in a sustainable fisheries management framework; and
- To assist in the development of funding strategies.

## **Aboriginal Community Consultation**

### ***Promoting the consultation process***

1. Developed a promotional video to introduce the Aboriginal Fishing Strategy and communicate key messages at key points in the development of the Strategy.
2. Developed posters and brochures with information about the Aboriginal Fishing Strategy and existing fisheries messages and rules.
3. Radio was used to reach a wide Aboriginal and community audience, particularly in remote and regional areas. Examples include Warangarri, PAKAM, Goolarri, BRAACS, and ABC Radio.
4. *Western Fisheries* magazine, Aboriginal and local newspapers, Department of Indigenous Affairs publications and other relevant publications were utilised.
5. Media releases from the Minister for Fisheries.
6. Assistance and advice in promoting and arranging each of the meetings was sought from the Department of Indigenous Affairs, ATSIC Regional Councils, Land and Sea Councils (representative Native Title bodies), Commission of Elders, Community Development Employment Project (CDEP) organisations, Aboriginal Resource centres, TAFE centres and Aboriginal community councils where appropriate.
7. Meetings were held in culturally and socially neutral areas (such as recreation centres and halls) where possible.

In addition, to assist Aboriginal people to gain an understanding about the Aboriginal Fishing Strategy, and allow people time to consider their responses, an example of the questions asked as part of the consultation process was forwarded to communities along with brochures, posters and videos prior to meetings. The questions were only designed as discussion starting points, however it appeared to give people an opportunity to focus their thoughts and result in frank discussions. A copy of the questions used to initiate discussions is provided below:

### **Topic 1 - Customary and subsistence fishing**

1. Why is fishing important to you? What species are important? How are they used (staple food, ceremonies, trade or art)?
2. Do you have your own rules about fishing? E.g. species targeted, times/areas/seasons fished, species only taken for special purposes?
3. Do any of the State fishing rules stop you from fishing in traditional ways, practising your cultural activities or gathering food? If so, which rules are restrictive and why is that so?

4. What are your ideas for making customary fishing and Fisheries laws work together to make sure there are fish for the future?

### **Topic 2 - Involvement in management**

1. What are some of the things about fishing and fisheries management you would like to know more about?
2. What is the best way to make sure Aboriginal people can have a say about fishing management? What consultation structure is best for this?
3. How can we involve you in research, education and compliance projects?

### **Topic 3 - Economic development**

1. What are your ideas for fishing related businesses in your region?
2. What has stopped you from starting an aquaculture, commercial fishing or fishing tourism business so far?
3. What could be done to encourage fishing/aquaculture business development?

### **Scheduled community meetings**

One of the consultation mechanisms used to allow Aboriginal interests to give their ideas, issues and aspirations as they related to fishing, was a series of scheduled community meetings throughout the State. These meetings were held in the following locations:

Esperance	26 March 2001
Albany	2 April 2001
Bunbury	9 April 2001
Manjimup	10 April 2001
Mandurah	30 April 2001
Metropolitan	1 May 2001
Moora	2 May 2001
Geraldton	5 June 2001
Carnarvon	11 June 2001
Denham	12 June 2001
Roebourne	7 May 2002
Cossack	7 May 2002
Port Hedland	8,9 May & 21 May 2002
Bidyadanga	2 May 2002
Broome & Dampier Peninsula	Liaison Officer, April, May, June 2002

Derby/Mowanjum	23 May 2002
Fitzroy	22 Oct. 2001, 27,28 June 2002
Kununurra	24 Oct. 2001 & 1,2 July 2002
Wyndham	25 Oct. 2001 & 3 July 2002
Kalumburu / Oombulgurri	23 Oct. 2001

One of the challenges associated with scheduled meetings is that unanticipated events can often interfere with meeting time frames. Unfortunately one of the most common issues is a death in the community and resultant sorry-time that will affect attendance at meetings. In addition, community issues such as health, education and funding may take priority and any meetings called in relation to these issues may also affect attendance at meetings.

### **Utilising existing networks**

In addition to scheduled community meetings consultation was undertaken through existing Aboriginal community and organisation networks. This process was often more effective than consultation via scheduled meetings. Examples of some of the networks used include:

- DIA Local Area Co-ordinators.
- ATSIC Regional Councils, e.g. Yamitji Regional Council meeting.
- Native Title representative bodies (Land and Sea Councils) assisted with meetings with native title claimants.
- Commission of Elders, e.g. State CoE meeting.
- ATSIC portfolio groups, e.g. economic development portfolio.
- Native Title Working Groups, e.g. Malgana Working Group, Denham.
- Traditional owners, e.g. Balangarra traditional owners at Kulumburu.
- Noongar Land Council (now South West Land and Sea Council).
- Native Title Unit (Department of Premier and Cabinet).
- Office of Aboriginal Economic Development.
- CDEP organisations, e.g. Southern Aboriginal Corporation.
- TAFE, e.g. Bunbury and Derby TAFE centres.
- Aboriginal Community Councils.
- Aboriginal Economic Development organisations, e.g. KREAC.
- Many Aboriginal people were contacted, or contacted the Working Group, and participated in consultation in communities, while fishing and in other locations that were most conducive to discussions.

### **Aboriginal Liaison Officer**

In the Kimberley and Pilbara, an Aboriginal Liaison Officer was employed through the Department of Indigenous Affairs to assist with consultation for the Aboriginal Fishing Strategy. The officer assisted tremendously in improving access to Aboriginal groups,

organising meetings through knowledge of local events and people, providing advice about cultural protocols and giving the consultation process a greater level of credibility.

### **Interstate consultation**

Consultation with other states consisted of a Working Group member visiting other states to gather information and networking with other Australian and overseas fisheries organisations dealing with indigenous fishing issues by the Executive Officer.

### **Managing Aboriginal Commercial fisheries**

During the management of trochus, mud crab and beche-de-mer fisheries involving Aboriginal communities, a range of practical issues were raised and identified, and aspirations, particularly relating to financial independence, self determination and the practical difficulties facing Aboriginal people trying to establish themselves in competitive fishing businesses.

### **Aboriginal Fishing Strategy Project Officer**

Located in the Broome office of the Department of Fisheries, having an identified position within the Department of Fisheries, and particularly after first visits to communities and Aboriginal groups. Aboriginal people had a contact point within the Department of Fisheries and could voice concerns, ask questions about any aspect of Fisheries and generally coordinate consultation process with Aboriginal interests.

In addition, the project officer was able to visit communities and meetings as time and resources permitted. As a result of this dedicated position, the increased relationships that accrued as a result many issues and aspirations were raised individually with the Aboriginal Fishing Strategy project officer, also the executive officer of the Aboriginal Fishing Strategy Working Group.

### **Regional Reference Groups**

Regional reference groups were established and initial meetings were held for the Goldfields and Esperance, Great Southern, South West, Peel, Mid West and Gascoyne regions. The reference groups were initially established to assist with regional specific strategies that could be incorporated into the State-wide strategy.

However, the regional reference groups were disbanded as it became clear that there were consistent issues across the State and that regional input could be effectively gained without the need for administration of regional groups.

## **Consultation with other interests**

Consultation with Department of Fisheries staff was undertaken to ensure strategies were consistent with the *Fish Resources Management Act 1994*. In addition the chairperson of the Aboriginal Fishing Strategy Working Group met with the chairperson of the Integrated Fisheries Management Strategy to ensure consistency between the Strategies. National Native Title Tribunal staff and Native Title Unit staff at the Department of Premier and Cabinet were consulted to gain advice on native title matters.

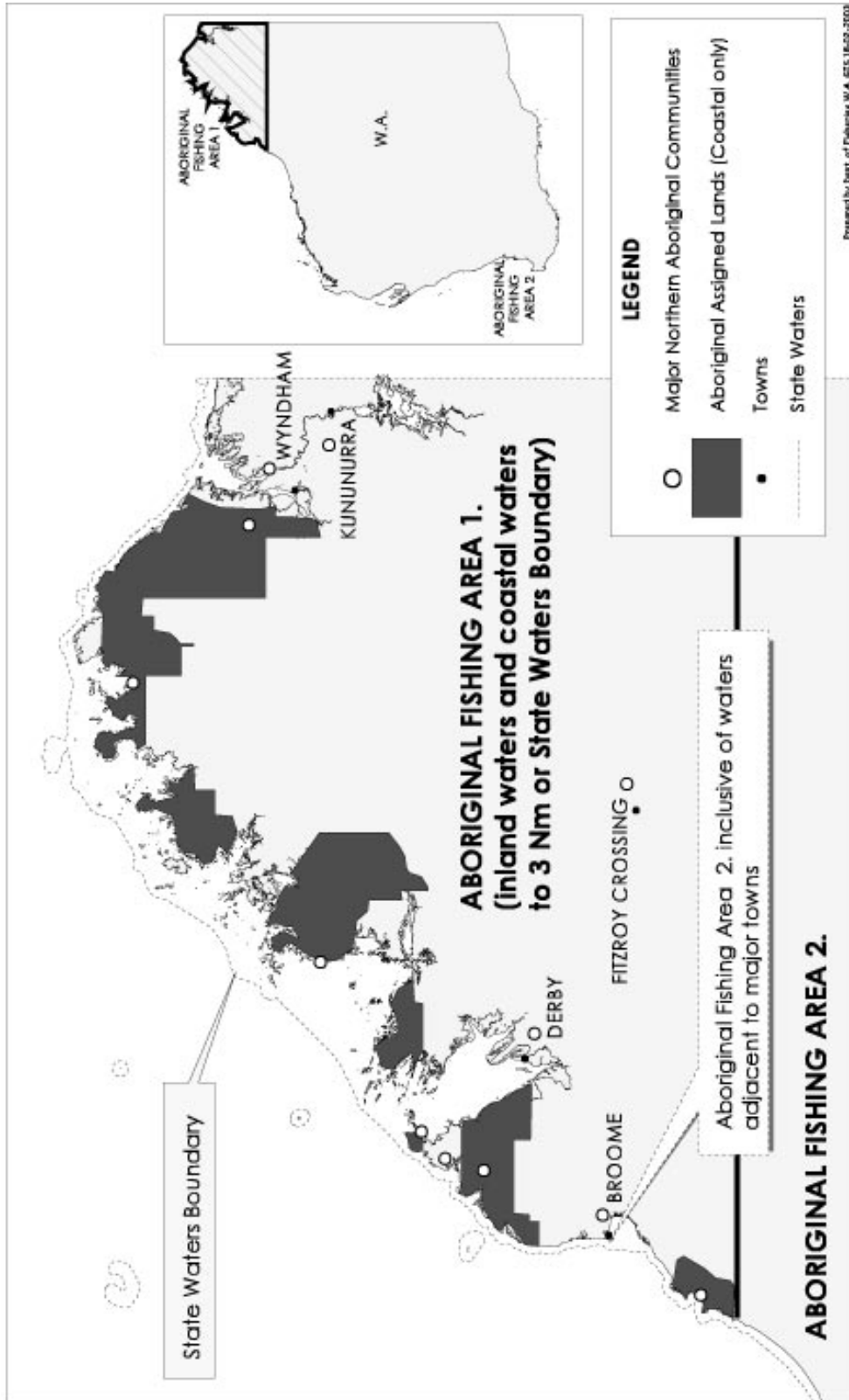
Position papers from Western Australian Fishing Industry Council, Recfishwest, WA Aboriginal Native Title Working Group and Conservation Council of WA were also received.

## **APPENDIX 4    Aboriginal Community Commercial Fishing Licence Policy**

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1. That 'special' non-transferable commercial licences be available to isolated Aboriginal communities.
2. That applications from communities located close to population centres be considered on a case-by-case basis, taking into account the proposed fishing area and any permission obtained from another community which may have tribal rights over the proposed fishing area.
3. That a licence application by an individual Aboriginal person to take fish for sale be treated in the same way as a licence application from any other Australian.
4. That fishing boat licences issued to Aboriginal communities to commercially fish be issued to the corporate body of the community on behalf of the community members.
5. That professional fishermen's licences are issued to individuals nominated by the community to fish under the community licence.
6. That the council of the community is made responsible to determine who is a community member and therefore who can fish under the licence.
7. That the species allowed to be taken under the 'special' licence arrangement be restricted to beche-de-mer, trochus and mud crabs.
8. That Aboriginal communities be permitted to commercially fish for trochus, mud crab and beche-de-mer in waters adjacent to traditional lands on which they live or waters adjacent to adjoining land with the permission of the community with tribal rights over the area.
9. That Aboriginal communities not be permitted to fish commercially for finfish species unless they purchase a Western Australian fishing boat licence.

# MAP 1 ABORIGINAL FISHING AREAS





## **FISHERIES MANAGEMENT PAPERS**

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- No. 1** The Report of the Southern Western Australian Shark Working Group. Chairman P. Millington (1986).
- No. 2** The Report of the Fish Farming Legislative Review Committee. Chairman P. Rogers (1986).
- No. 3** Management Measures for the Shark Bay Snapper 1987 Season. P. Millington (1986).
- No. 4** The Esperance Rock Lobster Working Group. Chairman A. Pallot (1986).
- No. 5** The Windy Harbour - Augusta Rock Lobster Working Group. Interim Report by the Chairman A. Pallot (1986).
- No. 6** The King George Sound Purse Seine Fishery Working Group. Chairman R. Brown (1986).
- No. 7** Management Measures for the Cockburn Sound Mussel Fishery. H. Brayford (1986).
- No. 8** Report of the Rock Lobster Industry Advisory meeting of 27 January 1987. Chairman B. Bowen (1987).
- No. 9** Western Rock Lobster Industry Compensation Study. Arthur Young Services (1987).
- No. 10** Further Options for Management of the Shark Bay Snapper Fishery. P. Millington (1987).
- No. 11** The Shark Bay Scallop Fishery. L. Joll (1987).
- No. 12** Report of the Rock Lobster Industry Advisory Committee to the Hon Minister for Fisheries 24 September 1987. (1987)
- No. 13** A Development Plan for the South Coast Inshore Trawl Fishery. (1987)
- No. 14** Draft Management Plan for the Perth Metropolitan Purse Seine Fishery. P. Millington (1987).
- No. 15** Draft management plan, Control of barramundi gillnet fishing in the Kimberley. R. S. Brown (1988).
- No. 16** The South West Trawl Fishery Draft Management Plan. P. Millington (1988).
- No. 17** The final report of the pearling industry review committee. F.J. Malone, D.A. Hancock, B. Jeffriess (1988).
- No. 18** Policy for Freshwater Aquaculture in Western Australia. (1988)
- No. 19** Sport Fishing for Marron in Western Australia - Management for the Future. (1988)
- No. 20** The Offshore Constitutional Settlement, Western Australia 1988.
- No. 21** Commercial fishing licensing in Western Australia. (1989)
- No. 22** Economics and marketing of Western Australian pilchards. SCP Fisheries Consultants Pty Ltd (1988).
- No. 23** Management of the south-west inshore trawl fishery. N. Moore (1989)
- No. 24** Management of the Perth metropolitan purse-seine fishery. N. Moore (1989).
- No. 25** Rock Lobster Industry Advisory Committee report to the Minister for Fisheries November 1988. (1989)
- No. 26** A report on marron fishing in Western Australia. Chairman Doug Wenn MLC (1989).
- No. 27** A review of the Shark Bay pearling industry. Dr D.A. Hancock, (1989).
- No. 28** Southern demersal gillnet and longline fishery. (1989)
- No. 29** Distribution and marketing of Western Australian rock lobster. P. Monaghan (1989).

- No. 30** Foreign investment in the rock lobster industry. (1989)
- No. 31** Rock Lobster Industry Advisory Committee report to the Hon Minister for Fisheries September 1989. (1989)
- No. 32** Fishing Licences as security for loans. P. Rogers (1989)
- No. 33** Guidelines for by-laws for those Abrolhos Islands set aside for fisheries purposes. N. Moore (1989).
- No. 34** The future for recreational fishing - issues for community discussion. Recreational Fishing Advisory Committee (1990).
- No. 35** Future policy for charter fishing operations in Western Australia. P. Millington (1990).
- No. 36** Long term management measures for the Cockburn Sound restricted entry fishery. P. Millington (1990).
- No. 37** Western rock lobster industry marketing report 1989/90 season. MAREC Pty Ltd (1990).
- No. 38** The economic impact of recreational fishing in Western Australia. R.K. Lindner, P.B. McLeod (1991).
- No. 39** Establishment of a registry to record charges against fishing licences when used as security for loans. P. Rogers. (1991)
- No. 40** The future for Recreational Fishing - Forum Proceedings. Recreational Fishing Advisory Committee (1991)
- No. 41** The future for Recreational Fishing - The Final Report of the Recreational Fishing Advisory Committee. Recreational Fishing Advisory Committee (1991).
- No. 42** Appendix to the final report of the Recreational Fishing Advisory Committee. (1991)
- No. 43** A discussion of options for effort reduction. Southern Gillnet and Demersal Longline Fishery Management Advisory Committee (1991).
- No. 44** A study into the feasibility of establishing a system for the buy-back of salmon fishing authorisations and related endorsements. (1991)
- No. 45** Draft Management Plan, Kimberley Prawn Fishery. (1991)
- No. 46** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister (1992)
- No. 47** Long term management measures for the Cockburn Sound restricted entry fishery. Summary of submissions and final recommendations for management. P. Millington (1992).
- No. 48** Pearl oyster fishery policy guidelines (Western Australian Pearling Act 1990). Western Australian Fisheries Joint Authority (1992).
- No. 49** Management plan, Kimberley prawn fishery. (1992)
- No. 50** Draft management plan, South West beach seine fishery. D.A. Hall (1993).
- No. 51** The west coast shark fishery, draft management plan. D.A. Hall (1993).
- No. 52** Review of bag and size limit proposals for Western Australian recreational fishers. F.B. Prokop (May 1993).
- No. 53** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries. (May 1993)
- No. 54** Rock Lobster Industry Advisory Committee, Management proposals for 1993/94 and 1994/95 western rock lobster season (July 1993).
- No. 55** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries on management proposals for 1993/94 and 1994/95 western rock lobster seasons (September 1993).

- No. 56** Review of recreational gill, haul and cast netting in Western Australia. F. B. Prokop (October 1993).
- No. 57** Management arrangements for the southern demersal gillnet and demersal longline fishery 1994/95 season. (October 1993).
- No. 58** The introduction and translocation of fish, crustaceans and molluscs in Western Australia. C. Lawrence (October 1993).
- No. 59** Proceedings of the charter boat management workshop (held as part of the 1st National Fisheries Manager Conference). A. E. Magee & F. B. Prokop (November 1993).
- No. 60** Bag and size limit information from around Australia (Regulations as at September 1993) F. B. Prokop (January 1993).
- No. 61** Economic impact study. Commercial fishing in Western Australia Dr P McLeod & C McGinley (October 1994)
- No. 62** Management arrangements for specimen shell collection in Western Australia. J. Barrington, G. Stewart (June 1994)
- No. 63** Management of the marine aquarium fish fishery. J. Barrington (June 1994)
- No. 64** The Warnbro Sound crab fishery draft management plan. F. Crowe (June 1994)
- No. 65** Not issued
- No. 66** Future management of recreational gill, haul and cast netting in Western Australia and summary of submissions to the netting review. F.B. Prokop, L.M. Adams (September 1994)
- No. 67** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Evaluation of management options Volume 1. B. K. Bowen (September 1994)
- No. 68** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Economic efficiency of alternative input and output based management systems in the western rock lobster fishery, Volume 2. R.K. Lindner (September 1994)
- No. 69** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) A market-based economic assessment for the western rock lobster industry, Volume 3. Marec Pty Ltd (September 1994)
- No. 70** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Law enforcement considerations, Volume 4. N. McLaughlan (September 1994)
- No. 71** The Rock Lobster Industry Advisory Committee Chairman's Report, October 1994, The Western Rock Lobster Fishery - Management proposals for the 1994/95 and 1995/96 seasons (November 1994)
- No. 72** Shark Bay World Heritage Area draft management plan for fish resources. D. Clayton (November 1994)
- No. 73** The bag and size limit review: new regulations and summary of submissions. F. Prokop (May 1995)
- No. 74** Report on future management options for the South West trawl limited entry fishery. South West trawl limited entry fishery working group (June 1995)
- No. 75** Implications of Native Title legislation for fisheries management and the fishing industry in Western Australia. P. Summerfield (February 1995)
- No. 76** Draft report of the South Coast estuarine fishery working group. South Coast estuarine fishery working group. (February 1995)
- No. 77** The Offshore Constitutional Settlement, Western Australia. H. Brayford & G. Lyon (May 1995)

- No. 78** The Best Available Information - Its Implications for Recreational Fisheries Management. Workshop at Second National Fisheries Managers Conference, Bribie Island Queensland. F. Prokop (May 1995)
- No. 79** Management of the Northern Demersal Scalefish Fishery. J. Fowler (June 1995)
- No. 80** Management arrangements for specimen shell collection in Western Australia, 1995. J. Barrington & C. Campbell (March 1996)
- No. 81** Management Options (Discussion Paper) for the Shark Bay Snapper Limited Entry Fishery. Shark Bay Snapper Limited Entry Fishery Working Group, Chaired by Doug Bathgate (June 1995)
- No. 82** The Impact of the New Management Package on Smaller Operators in the Western Rock Lobster Fishery R. Gould (September 1995)
- No. 83** Translocation Issues in Western Australia. Proceedings of a Seminar and Workshop held on 26 and 27 September 1994. F. Prokop (July 1995)
- No. 84** Bag and Size Limit Regulations From Around Australia. Current Information as at 1 July 1995. Third Australasian Fisheries Managers Conference, Rottneest Island. F. Prokop (July 1995)
- No. 85** West Coast Rock Lobster Fishery Management Plan 1995 - Draft for Public Comment. Edited by M. Moran (August 1995)
- No. 86** A Review of Ministerial Policy Guidelines for Rock Lobster Processing in Western Australia from the Working Group appointed by the Minister for Fisheries and chaired by Peter Rich (December 1995)
- No. 87** Same Fish - Different Rules. Proceedings of the National Fisheries Management Network Workshop held as part of the Third Australasian Fisheries Managers Conference. F. Prokop
- No. 88** Balancing the Scales - Access and Equity in Fisheries Management - Proceedings of the Third Australasian Fisheries Managers Conference, Rottneest Island, Western Australia 2 - 4 August 1995. Edited by P. Summerfield (February 1996)
- No. 89** Fishermen's views on the future management of the rock lobster fishery. A report. Prepared on behalf of the Rock Lobster Industry Advisory Committee by The Marketing Centre. (August 1995)
- No. 90** A report on the issues effecting the use of the Dampier Archipelago. Peter Driscoll, Landvision Pty Ltd (March 1996)
- No. 91** Shark Bay World Heritage Property - Management Paper for Fish Resources. Kevin A Francesconi (September 1996)
- No. 92** Pearling and Aquaculture in the Dampier Archipelago - Existing and Proposed Operations. A report for public comment. Compiled by Ben Fraser (September 1996)
- No. 93** Shark Bay World Heritage Property - Summary of Public Submissions to the Draft Management Plan for Fish Resources. Kevin A Francesconi (September 1996)
- No. 94** Rock Lobster Industry Advisory Committee Report - Management arrangements for the Western Rock Lobster Fishery for the 1997/98 season. Frank Prokop (May 1997)
- No. 95** Australian Salmon and Herring Resource Allocation Committee. P McLeod & F Prokop (*in press*)
- No. 96** Summary Report of the Freshwater Aquaculture Taskforce (FAT) by Chris Wells (*in press*)
- No. 97** (*in press*)

- No. 98** A Pricing Policy for Fisheries Agencies - Standing Committee on Fisheries and Aquaculture Management Committee. P Millington (March 1997)
- No. 99** Management of the South Coast Purse Seine Fishery. J Fowler, R Lenanton, Kevin Donohue, M Moran & D Gaughan.
- No. 100** The Aquaculture of non-endemic species in Western Australia - Redclaw crayfish (*Cherax quadricarinatus*). Tina Thorne (June 1997)
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- No. 104** Management of the Houtman Abrolhos System (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
- No. 105** Plan for the Management of the Houtman Abrolhos Fish Habitat Protection Area (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
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- No. 120** Draft Management Plan for Sustainable Tourism at the Houtman Abrolhos Islands. Prepared by LeProvost, Dames and Moore for the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries WA. (December 1998)
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- No. 140** Aquaculture Plan for the Recherche Archipelago, Western Australia. (June 2000)

- No. 141** Fish Protection Measures in Western Australia (June 2001)
- No. 142** Fisheries Environmental Management Plan for the Gascoyne Region (June 2002)
- No. 143** Western Rock Lobster. Discussion paper for seasons 2001/2002 and 2002/2003 (July 2000)
- No. 144** The Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia. Prepared by Jaqueline Chappell, contributions from Simon Hambleton, Dr Howard Gill, Dr David Morgan and Dr Noel Morrissy. (*not published, superseded by MP 156*)
- No. 145** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). As amended October 2000. Tina Thorne. This replaces Fisheries Management Paper No. 107.
- No. 146** Sustainable Tourism Plan for the Houtman Abrolhos Islands (February 2001)
- No. 147** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Full Report) (April 2002)
- No. 148** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Summary Report) (April 2002)
- No. 149** Final Plan of Management for the Lancelin Island Lagoon Fish Habitat Protection Area (March 2001)
- No. 150** Draft Plan of Management for the Cottesloe Reef Proposed Fish Habitat Protection Area (April 2001)
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- No. 153** A Five-Year Management Strategy for Recreational Fishing on the West Coast of Western Australia. Final Report of the West Coast Recreational Fishing Working Group (August 2001).
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- No. 157** Policy for the Implementation of Ecologically Sustainable Development for Fisheries and Aquaculture within Western Australia. By W.J. Fletcher (May 2002)
- No. 158** Draft Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (March 2002)
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- No. 160** The Introduction and Aquaculture of Non-endemic Species in Western Australia: the 'Rotund' Yabby *Cherax rotundus* and the All-male Hybrid Yabby. A Discussion Paper. (June 2002)
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- No. 164** Report of the Mackerel Independent Advisory Panel to the Executive Director, Department of Fisheries, on criteria for access to, and management arrangements for, the proposed Mackerel Fishery (Interim) Management Plan (November 2002)
- No. 165** Report to the Minister for Agriculture, Forestry and Fisheries by the Integrated Fisheries Management Review Committee (November 2002)
- No. 166** Fisheries Statutory Management Authority Inquiry. A background paper (February 2003)
- No. 167** Draft Fisheries Environmental Management Plan for the Northern Region (*in press*)
- No. 168** Aboriginal Fishing Strategy: Report to the Minister for Agriculture, Forestry and Fisheries by the Hon E. M. Franklyn QC, Chairman of the Aboriginal Fishing Strategy Working Group