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PLAN FOR OUR PARKS



Part of the spectacular south coastline. Photo – DBCA

Native title, traditional ownership and joint management of a south coast marine park

What is native title?

Native title is the recognition in Australian law that some Aboriginal people continue to hold rights to their land and waters according to their traditional laws and customs.

Native title is sometimes referred to as a 'bundle of rights' which may, at its highest, include the right to possess and occupy an area to the exclusion of all others (exclusive possession), or a set of non-exclusive rights such as the right to take and use water, hunt, fish, gather food, live, camp, protect sites, or teach law and custom on country. Any non-exclusive rights co-exist with other users' rights, and if there is any inconsistency between the two sets of rights, the non-native title rights prevail. Non-exclusive rights do not include the right to control access by others to the land or waters. More information can be found at: wa.gov.au/organisation/department-of-the-premier-and-cabinet/native-title

Native title can be extinguished (i.e. recognition refused) because of things government has done, or allowed others to do, over a particular area or areas that are inconsistent with native title. If native title is extinguished over a particular area, it does not necessarily mean that native title never existed in that area, or that traditional law and customs are not still practised there. For example, the vesting of national parks in the south-west and Great Southern legally extinguish native title rights, but customary activities are still carried out in those parks.



Tjaltjraak Rangers brushcutting. Photo – Esperance Tjaltjraak Native Title Corporation



Traditional ownership

Traditional ownership is not a legal concept in the same way as native title but recognises an enduring connection to country even if proving continuous practice of traditional law and customs, as is required to have native title legally recognised, is difficult for Aboriginal people because they have been displaced by colonial settlement.

The Western Australian Government has formally recognised that the Noongar people are traditional owners of the south-west of Western Australia. The *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016* recognises the Noongar peoples' relationship with the Noongar lands, and their significant and unique contribution to the heritage, cultural identity, community and economy of WA.

Aboriginal Customary Activities

The *Conservation and Land Management Act 1984 (CALM Act)* recognises that Aboriginal customary activities may still be carried out on conservation estate, even if native title rights and interests are extinguished or cannot be proven to the level required to have native title legally recognised. These customary activities may include accessing land or waters to hunt, take, make and eat food, make and use medicine, use fire, practise artistic, ceremonial or other cultural activities, and use natural resources, including water, for ceremonies.

Written permission from DBCA's Parks and Wildlife Service is required before Aboriginal people can hunt and gather in marine nature reserves or sanctuary zones in marine parks, unless provided for in the management plan.

Who are the native title holders or traditional owners on the south coast of WA?

From west to east, south coast native title holders or traditional owners are:

The **Wagyl Kaip and Southern Noongar Traditional Owners**, who have rights under an Indigenous Land Use Agreement (ILUA) reached between the WA Government and the Wagyl Kaip/Southern Noongar people. That ILUA provides for joint management of areas of land and waters between Sandy Island to the west and Masons Bay to the east, including offshore to the limit of State waters.

The **Esperance Nyungar Native Title holders**, who have non-exclusive rights over areas of land to the low water mark between Masons Bay and Point Malcolm.

The **Ngadju People Native Title holders**, who have exclusive and non-exclusive rights over areas of land to the low water mark between Point Malcolm and Point Dover.

The **WA Mirning Native Title holders**, who have exclusive and non-exclusive rights over areas of land to the low water mark between Point Dover and the WA/SA border.

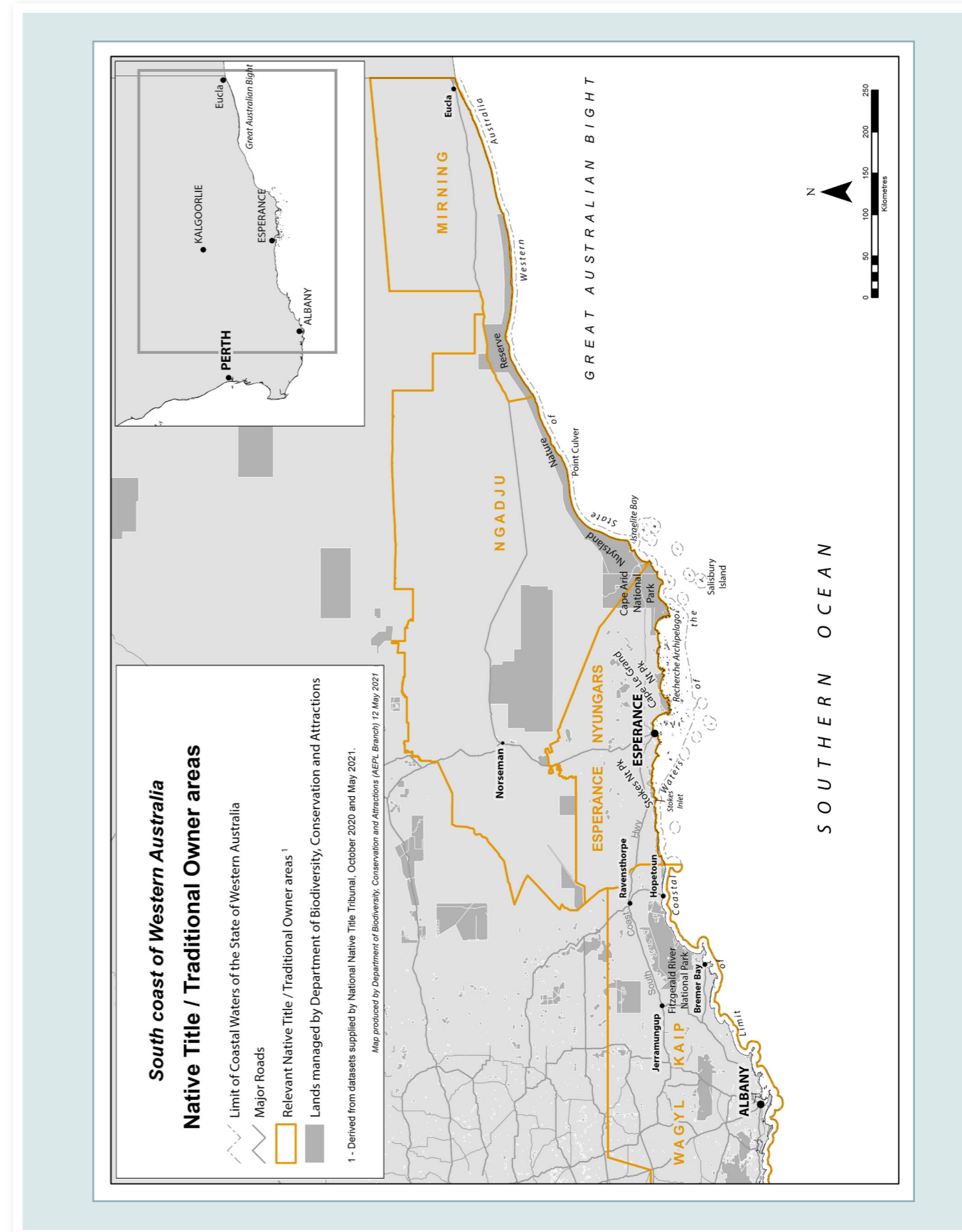


Above Carrying out a dig for Aboriginal artefacts.

Left Rangers.
Photos – Esperance Tjaltjiraak Native Title Corporation



South coast of Western Australia native title / traditional owner areas





Proposed South Coast Marine Park

What is joint management?

Joint management is a partnership between native title holders or traditional owners and the Department of Biodiversity, Conservation and Attractions (DBCA) to work together to care for country. The CALM Act provides that DBCA and native title holders or traditional owners can negotiate an agreement for the joint management of lands and waters managed under the CALM Act, including marine parks.

Joint management is an extension of the recognition of native title holders' or traditional owners' role in managing and caring for country. Aboriginal knowledge and Western science intersect to better protect country, and cultural tourism opportunities are enhanced.

The CALM Act requires all management plans for reserves (including marine reserves) to include the management objective to protect and conserve the value of the reserve to the culture and heritage of Aboriginal people. Joint management provides a practical tool to help ensure this objective is met.

Right Rangers. Photo – Esperance Tjaltjraak Native Title Corporation

Below South coast beach. Photo - Kate Rodger/DBCA

Joint management partners collaborate through a Joint Management Body to make decisions about how land and waters are managed; and assist in the development of a joint management plan, which sets out the natural and cultural values of the subject area, how they will be managed, and evaluation and review mechanisms.

Where a joint management agreement is successfully negotiated, DBCA will enter into joint management partnerships with each of the native title holders or Traditional Owner groups relevant to the final agreed boundaries of a south coast marine park.

Each joint management plan will reflect specific management arrangements to protect the natural and cultural values of the area in question.



More information

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Header photos: Leafy seadragon. Photo – Peter Nicholas. Southern right whales. Photo – Peter Nicholas/DBCA. Fishing on the south coast. Photo – Tourism WA. Information current at September 2021. This publication is available in alternative formats on request.