



NORTHERN LAND COUNCIL

**SUBMISSION TO
AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION INQUIRY
MARINE FISHERIES AND AQUACULTURE
DRAFT REPORT
21 October 2016**

OVERARCHING STATEMENTS

The Northern Land Council (NLC) welcomes the opportunity to continue participating in the Inquiry on Marine Fisheries and Aquaculture (Inquiry) and present key positions relevant to engaging the rights and interests of Aboriginal Native Title holders and landowners in the Top End of the Northern Territory in fisheries management.

To set the paradigm of this further submission, the recent Australian Human Rights Commission submission (29 August 2016) to the United Nations Committee on Economic, Social and Cultural Rights is a timely notice to the Australian Government to adopt full and effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP) in all its policies and programs, such as its determination of fishery regulatory requirements as it affects Aboriginal people's interests. This fundamental international policy adopted by the Australian Government in 2009 is yet to transpire in a meaningful way.

The NLC maintains that the rights and interests of Traditional Owners are central to determining rules for all fishery arrangements for access and resource sharing. The greatest inadequacy of the Draft Report is that it understates Aboriginal rights by relegating them to just a 'customary' sector. Aboriginal 'customary' use is inclusive of recreational, commercial and cultural practices. Our determination is to inform the rules that manage all fisheries to ensure our interests are recognised and maintained.

State and Territory fishery regulations must marry up with our own forms of management to ensure both sustainable and equitable fisheries and the protection of our rights. To enable this, Aboriginal people first need to be provided the space to have the conversation to establish their terms and directives. Government programs provide little avenue for this in fisheries. No programs in the Northern Territory are dedicated to meaningful engagement of Traditional Owners to discuss specifically these issues.

It is beyond the remit of the Productivity Commission through its consultative process to project any definitive views without first obtaining the collective observations of Native Title holders. Relevant to the UNDRIP principles of consent and engagement in all policy and decisions that impact our estates, we assert that the Productivity Commission include in its recommendations to the Australian Government, a priority need for States and Territory's to develop and commission implementation of a framework to engage Native Title holders and landowners in informing and participating in fisheries management regimes.

For a meaningful framework to be successful, relevant expertise and the ability to engage research is essential to policy development. Research must be based on principles for participatory action based approaches; as successfully delivered in a range of Indigenous led land and sea country agendas (engagement in freshwater management as delivered by the National Water Commission (2006-12) is exemplar of an enabler for engagement).

In the case of the Northern Territory, relevant authorities, such as the NLC which has statutory responsibility for relevant Acts, are not equipped to inform this process unless sufficient capacity and resources are invested for us to engage a research and policy development approach in consultation with Traditional Owners. Without such commitments from Governments, the Inquiry will stand only as a speaking piece with no meaningful outcomes unless appropriate incentives are provided to state and territory Governments to enable such a process.

While the above statements provide imperatives from NLC perspective for engaging our rights in fisheries management, further input is submitted below relevant to the detail of the Draft Report.

INDIGENOUS FISHING SECTOR

The NLC is encouraged that the Inquiry gives recognition to

- Indigenous customary fishing consistent with Native Title;
- Setting the customary value as a priority in harvest strategies;
- Identifying the fundamental issue of qualifying and quantifying customary value in fishery management practices; and
- Customary fishing allowing fishing activity for commercial purposes.

- Determination of any policy decisions must be at the discretion of Traditional Owners.

The Draft Report recognises the potential for customary fishing to ‘help’ improve the role of Traditional Owners in participating in management decisions and the role of Rangers in providing practical services for fisheries management. It does not however, go beyond the cultural rhetoric with regard to the fundamental right of Aboriginal people to be engaged in all policy and management decisions. Nor does the Draft Report offer any recommendation to the Australian Government on an appropriate framework to overcome the significant barrier of Traditional Owners to inform the basis for access arrangements and resource sharing, which is necessary to shape economic development in fisheries in the north of Australia.

Are fishery management advisory committees currently the best-fit model for engagement?

What does the Productivity Commission recommend are the enablers for Indigenous participation in commercial fishery economies?

What are the practical pathways that will enable Aboriginal engagement in fishery management and policy decisions?

Relevant to Native Title and Information Request 5.2 – the NLC makes the following assertions.

Firstly, Native Title rights should be better represented in terms of asserting the right to develop rules around access to areas and resources for all fishing sectors.

Secondly, the Indigenous fishing sector should not incur any costs or penalties with regard to overall fisheries management costs. Taking fish for customary purposes is an inherent right and protected under Native Title. The NLC rejects any notion that Indigenous access to resources is equal to any other sector. Any incursion on this right can be argued in a court of law and invoke compensation.

Lastly, the Draft Report diminishes the role of Aboriginal Ranger Programs. The NLC rejects the suggestion that Aboriginal Ranger programs could contribute their services to offset costs to the management of customary fishing. To infer Rangers could assume taking on a service to offset costs is highly problematic as it suggests that current fee-for-service engagements could be misappropriated to provide other services.

Relevant to Information Request 5.1 – for individual Indigenous Australians to prove their entitlement to undertake customary fishing; we maintain that establishing entitlement to Indigenous fishing rights must be at the discretion of Traditional Owners and with the appropriate authorities that administrate these rights. Again, it is beyond the remit of the

Productivity Commission to offer any such advice until it has been informed through due process in consultation with Aboriginal people. As stated upfront, the gap in the Draft Report is in providing recommendation on the need to develop a framework for engagement in the first instance to deal with these multiple and complex issues.

RECREATIONAL FISHING

The NLC supports Draft Recommendation 4.1 - recreational fishing activity must be licensed in the Northern Territory [highlighting here - with the inclusion of vessels], to provide more enforcement measures, which is of particular relevance in the Top End where fisheries regulations remain dissociated from and remain unaccountable of fishing activity impinging on Aboriginal rights. This is of particular relevance to Traditional Owners seeking to protect their rights and assert their interest in determining a suitable arrangement with the recreational sector for access and resource sharing. Also, Aboriginal customary fishing includes recreational fishing and those interests are relevant to the management of this sector.

COMMERCIAL FISHING

In the Northern Territory, the current licence regime used to regulate fisheries limits Aboriginal participation in commercial fisheries because licences are expensive and the number of licences is limited.

While NLC acknowledges some issues with the individual transferable quota (ITQ) management system, the ITQ provides greater opportunity for Aboriginal people to participate in commercial fishing. Traditional Owners in the Northern Territory could potentially hold the rights to a number of fisheries that rely on access to tidal waters. Allocating a quota of those fisheries to Traditional Owners would provide opportunity to participate further in the commercial sector and subsequently fisheries management.

While NLC supports Draft Recommendation 3.1 – with respect to the Northern Territory moving each of its fisheries to ITQ, Aboriginal people need to be offered the opportunity to present their views. Terms for quota management need to be determined by Traditional Owners, but could be held in perpetuity by Traditional Owners with the ability to be leased to generate income. It is noted here though, that in the Northern Territory, Traditional Owners have not yet been consulted on the preferred regime and its construct.

Similar to recreational fishing, NLC asserts that Aboriginal customary fishing includes commercial practices. The value of Indigenous fishing (recreational, commercial and cultural) is not well represented in research and policies and presents a significant gap in process toward the management of resources.

RESOURCE ACCESS ARRANGEMENTS

While the NLC recognises the role of Governments in working across sectors to determine fair and equitable resource sharing frameworks, engaging the interests of Traditional Owners, relevant to their rights and interests remains significantly understated. This is of particular concern in the Top End where, as well as Native Title rights, Aboriginal communities have property rights for 85% of the Northern Territory (NT) coastline.

The NLC maintains (April 2016 Submission):

'This significant asset that is unique to the rest of Australia provides an important opportunity for communities to create markets and build their capacity around providing services to and engaging directly in marine fisheries. However, these mostly remote Aboriginal communities have limited infrastructure or no access to programs or services and expertise that is needed to assist them in their planning and development of commercial interests.'

The ideal outcome for coastal landowners is an arrangement that provides both control and income: control over all fishing sectors in waters over or adjacent to their land, and an income stream generated by all fishing interests.'

Government policy directives should be cognisant that Traditional Owners are not stakeholders, but landowners and managers. Traditional Owners in the Top End already control access to tidal waters over their lands under the *Aboriginal Land Rights Act (Northern Territory) 1976*, to marine areas closed under the *Aboriginal Land Act (Northern Territory) 1978* and have native title rights and determinations over sea country. The issue however, is that the Government, in its administration of the Fisheries Act, has not yet accommodated a process to meaningfully resolve an appropriate access arrangement that ensures sustainability of fishery resources and provides multiple benefits for a range of interests. Rights remain siloed in a 'customary' basket and dissociated from all fishery management regimes.

The Draft Report should provide recommendation on firstly, recognising the priority for Traditional Owners to participate in management decisions, such as determining where and when fishing can be undertaken, limits on catch and individual sector arrangements for access relevant to their significant rights and landholdings. Secondly, provide recommendation on how this achieved at both national and territory levels.

ENVIRONMENT

NLC supports the Draft Report's notion that coastal and marine development proposals should be developed for Governments to consider impacts on commercial fishing. However,

it should not be considered only in relation to just the commercial sector, but be inclusive of all sector interests, including Indigenous, and be open to public consultation.

Policy or regulatory decisions, informed by research, should extend beyond just the health of stock, and consider environmental factors, climate change, other industry practices impacting fisheries particularly mining, water extraction/discharge and agricultural practices, social interests, local aspirations and overlapping regulatory requirements (such as land rights).

NLC supports Draft Recommendations in Chapter 7 relevant to environmental protection from fisheries activities. This is particularly relevant to the by catch of species important to Aboriginal communities, such as turtles and other fish species given low commercial value status, but have high value cultural and social value.

Relevant to Information Request 7.2 – improving the management of impacts of pest native species on fisheries; can be achieved through the role of Rangers who are already actively caring for sea country, monitoring and measuring a range of species, undertaking research and participating in fisheries compliance. They are often, or work closely with, the caretakers of Traditional Knowledge. Traditional Knowledge receives little recognition or value in terms of fishery management yet is a significant tool in management in terms of monitoring environmental changes and giving weight to different value systems.

Rangers as managers and as providing practical application of fisheries management is obvious from a number of perspectives, including Closing the Gap on multiple levels, culturally appropriate workforce given the demographic of the Northern Territory coastal areas (greatly Aboriginal) and empowering existing governance systems. Rangers are already on the front line, skilled, employed, and seeking further fee-for-service business opportunities and ultimately seek to maintain the health of their coastal environments for future generations and enable intergenerational transfer of knowledge.

The Draft Report gives no weight to the same interest in context to Indigenous Protected Areas (IPAs). Coastal IPAs are growing across the Top End of the Northern Territory. They provide existing governance frameworks and a plan for management that includes considerations for fisheries. Though not statutory, they are declared on the basis they meet IUCN criteria specific to the EBPC Act, but deliver multiple outcomes in addition to environmental benefits. They present a working model of Aboriginal people actively participating in management decisions and delivering management outcomes that meet a range of interests. They also support an existing industry, which is service delivery through Ranger programs for a myriad of activities.

SACRED SITES AND CULTURAL HERITAGE

The Draft Report gives little recognition, other than to environmental, to other overlapping regulatory frameworks, such as managing any impacts of fishing on Aboriginal Sacred Sites and Heritage with respect to the Sacred Sites Act and Aboriginal Heritage Act. Though not consistently legislated across states, protection of Australia's heritage must be considered in fisheries management.

Again, the determination of protective measures should be at the discretion of Aboriginal people and in some instances enable closure of areas and defining parameters for the management of those areas. Although this level of management is already underway with IPA and Sea Country Management Plans for coastal areas, they remain unlegislated and as such have no influence on fishery regulations.

RESEARCH

The Draft Report identifies a discernible gap and challenge in determining how to provision rights in management and resource allocations appropriate to the interests of Aboriginal people.

Policy decisions and government actions should be informed through research based instruments. Decisions in fisheries management should not only be evidence based but informed by community interests. Participatory action based approaches relevant to the rights of Aboriginal people in decision making processes is paramount to setting regulatory requirements in the north, yet remains strikingly absent and should be enabled as the precedence to engagement.

In the absence of any program focussed on holistic marine management, the Fisheries Research Development Corporation (FRDC) is one entity that could be engaged to inform Government of research priorities from a national perspective, such as the priorities set by the FRDC Indigenous Reference Group (IRG). The role of the IRG however, would need to be enhanced to undertake this role. It is currently siloed from the main research program and instead, should be integral to FRDC's framework.

National priorities as set by the IRG could then inform approaches for engagement at the state and territory level but relevant to jurisdictional needs. Dedicated regional programs would then support the framework that enables participation of Traditional Owners in decision making processes. From this position, where possible, Indigenous agencies should be engaged and supported to develop and deliver research with their respective communities, independent of Government, as best practice. Aboriginal people would then determine their needs and how they wish to be engaged in the process.

Irrespective of the suggestion above, a dedicated R&D program is necessary to deliver outcomes within regions across Australia. Today, a growing number of research agencies and diverse entities are working to secure their individual research interests with little coordinated effort. The demand on Indigenous entities, including NLC, to respond to these multi interests is in conflict with our own institutional needs. Ideally, Aboriginal people should be positioned to determine the priorities and direct their process rather than the current entrenched reactionary response to perpetual outside interests.

An Indigenous led national research program, dedicated to coastal and marine environments with hubs established across regions could help redress multiple and conflicting interests into a more streamline approach for research and policy development. Fundamental however, is the investment in Indigenous leadership and community participation in providing meaningful R&D outcomes.

CONCLUSION

Our summary of fisheries in the north is that it is exclusive of Aboriginal rights and interests. Today we continue to be consigned to adopting new forms of fisheries management and our practices are relegated to the cultural basket or ignored completely. Our relationship with Governments is one founded on contesting our rights in the court rather than meaningful engagement at the outset in decision making processes.

The Draft Report, though recognising our Native Title rights, is limited in how rights go beyond recognition and translate into our meaningful engagement in regulatory decisions, governance and practical application of fisheries management.

The NLC recommends to the Productivity Commission in its Final Report to set the establishment of an appropriate engagement framework to facilitate Aboriginal participation in fisheries management as a priority. The framework must not only enable a dialogue on governance, participation and practical application of fisheries management but also invest in Indigenous leadership and community participation. The framework must be resourced to support expert advice and research development to inform policy decisions.

The Commonwealth must incentivise this strategy through clear principles, policy directions and resources so that state and territory Governments undertake such a framework.

The NLC hopes this further contribution adds value to the intent of the Inquiry through its terms of reference, particularly with regard to 'providing incentives to Indigenous communities to manage their fisheries'.