

19 April 2016

Australian Marine Fisheries and Aquaculture
Productivity Commission
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Canberra ACT 2601
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Dear Sir/Madam

**RE: INQUIRY INTO THE REGULATION OF AUSTRALIAN MARINE FISHERIES AND
AQUACULTURE SECTORS**

As the peak representative body for the wild catch, aquaculture and trader/processor seafood sectors in the Northern Territory (NT), the Northern Territory Seafood Council welcomes the opportunity to participate in the inquiry into the regulation of Australian Marine Fisheries and Aquaculture Sectors.

There is huge potential for growth and development of the NT seafood industry, with a large fishing area of around 500,000 square kilometres, small number of licences and a largely underutilised offshore fishing area. Simultaneously we are seeing an increase in demand for Australian seafood. Yet currently there is little investment in industry development and of the investments that have been made, they do not match possible returns, with the vast majority of existing returns stagnant or decreasing.

Please find below NT Seafood Council's specific response in context to the terms of reference to the inquiry. Of paramount importance is the need to increase the productivity and efficiency of for both wild catch and aquaculture sectors.

There are many regulatory imposts on industry, including the costs of resource management, environmental conservation, taxation, industrial relations, workforce requirements, maritime safety, export controls, food safety standards and food labelling. These have direct and indirect impacts on industry's competitiveness, efficiency and profitability. This complex regulatory environment involves many agencies and authorities with inadequate capacity and a resulting culture of 'no change'. As a result of this complexity and lack of capacity, lengthy delays resulting in significant productivity has occurred and still occurs and many of our Northern Territory fisheries have not changed in 20 years.

In Australia, the jurisdictional allocation of fisheries responsibility has had major implications for the effective management of fisheries resources. Despite reviews in 2003 and 2012 it is apparent that the aim of the Offshore Constitutional Settlement (OCS) which was *'designed to provide a more effective management structure for Australian fisheries and to remove some of the complexities that arose because of divided Commonwealth and State jurisdiction'* has been missed and its value has been eroded.

NT Seafood Council members have raised concerns that there has been no progress in regulatory simplification, streamlining, management consistency and removal of unnecessary restrictions since the 2004 Productivity Commission research paper¹.

Currently there are several issues faced by the Northern Territory fishing industry with respect to regulation. These include:

- The complexity of the OCS;
- Shared fish stocks with adjacent States;
- Multiple jurisdictional management responsibilities;
- Multiple regulations (outside of fisheries) impacting on effective fisheries management;
- Inconsistency in how fisheries have evolved;
- A licence structure that has evolved from a government perspective rather than from an investment perspective (poorly defined rights);
- Poorly defined and outdated legislation leading to inconsistency in interpretation and enforcement.
- Politicised decision-making;
- Decision-making open to bullying;
- Lack of departmental capacity;
- Inability of current management frameworks to quickly adapt to changing conditions;
- Inability of current management frameworks to promote innovation, even in output-controlled fisheries;
- Limited infrastructure to allow fisheries development in remote areas;
- Inconsistency in penalties for fisheries infringements across Australia;
- Inconsistency in seafood labelling throughout the supply chain;
- Lack of security of tenure/access;
- Sacred sites over marine areas; and
- Aboriginal Land Rights and access to intertidal water.

Key areas for solutions to address the issues above include:

1. A review on OCS arrangements is required so that more flexible and standardised arrangements can be delivered.
2. Efforts are made to ensure original intent of OCS arrangements are met.
3. Review multiple jurisdiction marine fisheries with the view to consolidate and develop joint management.
4. An Australian Aquaculture Policy and subsequent Act, to simplify regulation of aquaculture and promote aquaculture development.
5. Development of a Federal Seafood Policy to support both marine fisheries and aquaculture as a significant contributor to agricultural development, regional employment, and to food production.
6. Development of a regional approach and dedicated body to tackle illegal foreign fishing.
7. Allocations for all fisheries should be implemented as a priority.
8. Removal of the current loophole in Country of Origin labelling by extending country of origin laws for seafood to the food service sector.
9. Social and economic data about the seafood industry throughout the supply chain to determine the true economic value of the seafood industry.
10. Secure resource access and clearly defined access rights.

¹ Productivity Commission, 2004 *Assessing Environmental Regulatory Arrangements for Aquaculture*

11. Consistent objectives for fisheries management across all States/Territories.
12. Harvest strategies are implemented with allocations across all sectors.

Offshore Constitutional Settlement

The jurisdictional allocation of fisheries responsibility in Australia has significant implications for the effective management of fisheries resources, particularly for those fisheries where stocks cross boundaries of State/Territory and Australian Government jurisdiction.

Over 25 years ago the Australian Government looked at a blueprint for the future management of fisheries. As part of this, they outlined the aims of the Offshore Constitutional Settlement (OCS) which had been progressively implemented since 1983. The OCS was *'designed to provide a more effective management structure for Australian fisheries and to remove some of the complexities that arose because of divided Commonwealth and State jurisdiction. The aim was to have individual fisheries managed under a single law, Commonwealth or State, and to reduce the number of licences each fisherman would have to hold, resulting in more cost efficient fishery management.'*

Over the years, despite reviews in 2003 and 2012, the OCS has become increasingly complex to the point where it now completely misses its original aim in removing complexity and providing effective, cost efficient fishery management. The OCS served a valuable purpose when it was first created, but over 25 years later this value has been eroded.

Economic performance and innovation

The current access arrangements do not provide for the realisation of the highest economic value from fisheries. The failure to promote efficiency and innovation in our management has seen the industry stagnate with regards to investment. Combined with the uncertainty about tenure, current arrangements fail to attract investment.

Management agencies seem designed to oppose or avoid change and some industry members are also opposed and/or avoid change. This has left cottage industries without the investment to modernise operations. Any industry operating in this type of environment will be lumbered with unnecessary and burdensome costs through time.

Barriers to innovation exist when arrangements are designed to avoid innovation. Simple input controls are in fact based on the principle of avoiding innovation. For the seafood industry to be viable, arrangements must actively promote innovation and the implementation of innovative tools that promote efficiency is not enough.

Measures that actively encourage gear innovation and trials must be included in fisheries arrangements and management agencies must support not hinder this investment. Change must be promoted on commercial time frames – which is months not decades as is currently the case.

Without management arrangements that promote change we will see further declines in investment. It is not just a change in fisheries regulations that is required, management agencies must accept the need for change. Even if the industry did today have secure access in fisheries, without innovation and change we would still see these fisheries decline. Management agencies need to actively promote the industry and embrace change.

Importantly, driven by industry, there are fisheries in which support for innovation exists and changes have been made. These are not only exciting businesses to individually work within but collectively make up viable and resilient fisheries. Investors need management arrangements that promote efficiency and innovation and provide certainty.

Certainty

Like all businesses, fishing requires certainty, efficiencies and innovation. One of the major challenges to coastal fisheries in the Northern Territory is ensuring certainty of access, especially with regard to intertidal waters overlying Aboriginal land. Legislation covering sacred sites and access to Aboriginal Land can also present challenges, with access to information often difficult and confusion with regard how and who to negotiate with.

Overcapitalisation

Overcapitalisation manifests itself in large numbers of unfished permits. Examples of fisheries with unfished permits exist in the Northern Territory and all round Australia.

Fisheries with unfished permits need management frameworks with very clear allocations and efficiency and innovation measures implemented. This allows those with a genuine interest in developing fisheries to acquire the access. Fisheries change is driven by fishers, and they need the right framework to do this. They cannot be tied down by opposition from those with no real interest in change or further investment.

Harvest Strategies

Harvest strategies provide more certainty for fishers. Further work is required on refining targets and how we measure fishery performance more efficiently, especially for smaller, data poor fisheries.

Quota

Fisheries management arrangements must consider both the economic and biological factors that affect the management of commercial fisheries. The NT Seafood Council's preferred management option for commercial fisheries is the use of Individual Transferable Quotas (ITQs). Only this management approach encourages innovation while ensuring the long term sustainability of our fisheries. The use of alternative management controls such as Individual Transferable Effort (ITEs) should only be considered if ITQs are demonstrated to be impractical in a specific fishery.

Please refer to the [NT Seafood Council Policy Position](#) Paper No. 4: *Preferred Management Arrangements* for more information on the NT Seafood Council's position regarding fisheries management arrangements.

Input and Output Controls

Any restrictions on vessel size, engine power, fishing equipment and technology should carefully consider the risk of stifling investment and reducing opportunities for efficient, sustainable and safe fisheries development. Any consideration of restrictions must consider important and relevant work health and safety concerns.

The NT Seafood Council is strongly opposed to restrictions based on loose terms such as 'factory fishing'. Almost the entire NT fishing fleet could be considered to be 'factory fishing' given the tropical conditions and vast distances, ensuring the need for processing and freezing at sea for even the smallest of vessels.

Any management measures regarding input or output controls should have a clear statement of intent, method of operation and process for review. We must avoid using input controls in quota systems trying to manage the same impact. If quota is utilised it must be the primary tool for effort control, input controls should only be used in such circumstances to mitigate and minimise and other impacts, for example threatened, endangered and protected species interactions.

Multiple jurisdictions/fisheries

The original intent of OCS arrangements need to be met - that being *stocks or fisheries managed by one agency or entity, with one set of arrangements*. The costs of this overlap are very high and have resulted in multiple management agencies and differing political

agendas, legislation and licencing. There are many examples of duplication, regulatory overlap in species management some of which are listed below:

SPECIES	JURISDICTIONS
Mud Crab (<i>Scylla serrata</i> , <i>S. olivacea</i>)	Northern Territory, Queensland, Western Australia, New South Wales
Barramundi (<i>Lates calcarifer</i>)	Northern Territory, Queensland, Western Australia
Black Jewfish (<i>Protonibea diacanthus</i>)	Northern Territory, Queensland, Western Australia
Coral Trout (<i>Plectropomus</i> spp., <i>Variola</i> spp)	Northern Territory, Queensland, Western Australia, Commonwealth
Spanish Mackerel (<i>Scomberomorus commerson</i>)	Northern Territory, Queensland, Western Australia, Commonwealth
Grey Mackerel (<i>Scomberomorus semifasciatus</i>)	Northern Territory, Queensland, Western Australia
Blacktip Shark (<i>Carcharhinus tilstoni</i> , <i>C. limbatus</i> , <i>C. sorrah</i>)	Northern Territory, Queensland, Western Australia, New South Wales
Crimson Snapper (<i>Lutjanus erythropterus</i>)	Northern Territory, Queensland, Western Australia
Goldband Snapper (<i>Pristipomoides multidens</i>)	Northern Territory, Queensland, Western Australia
Golden Snapper (<i>Lutjanus johnii</i>)	Northern Territory, Queensland, Western Australia
Red Emperor (<i>Lutjanus sebae</i>)	Northern Territory, Queensland, Western Australia
Saddletail Snapper (<i>Lutjanus malabaricus</i>)	Northern Territory, Queensland, Western Australia

A review of multiple jurisdiction fisheries is required with consideration of other management options i.e. joint state management. The concept of OCS and aims are as valid today, unfortunately ownership and politics has driven arrangements more than the objective of single agency management.

Fisheries Objectives

Underlying objectives of fisheries management regulation are not clear, nor are they widely understood and they are inconsistent between management agencies. The principle of Ecologically Sustainable Development (ESD) includes social and economic objectives however, unlike sustainability, these two objectives are poorly understood and further work is needed to measure, monitor and balance the three objectives.

Unfortunately, without monitored or measures objectives, 'social benefit' has in effect meant listening to the loudest group with little measurement of community benefit.

ESD, if well-defined and measured, should be the key objective of fisheries management and regulation. The objectives must include allocations between sectors, carried out as a priority. Further measures to actively promote certainty and innovation are also required.

Social objectives should be balanced based on the targets or aims of specific fishery. The greatest error in this area is applying social benefits to only one sector. There are of course social benefits from all sectors.

The investment required to operate in commercial fishing, including licences and infrastructure, can only be returned if the fisheries resources are managed and utilised in a sustainable manner. A long term and viable fishing industry is completely dependent on the

sustainable management of the NT fisheries resources. An economically viable fishery based on the unsustainable biological use of the resource is not possible.

Please refer to the [NT Seafood Council Policy Position](#) Paper No. 1: *ESD* for more information on the NT Seafood Council's position regarding ESD.

Allocations

Allocations need to be more explicit and binding on all sectors to ensure a viable and sustainable fishing sector, both now and into the future.

Managing one sector to its allocation, while others are left to expand, fails all sectors and the environment. Reallocations must not be considered, however, arrangements should allow for changes through time. This should be carried out using market forces or similar, noting that it is open to governments to fund such changes.

Australia's fisheries management, while much improved in relation to sustainability, is still failing commercial fishers in some areas. There are still too many political decisions and fear campaigns that leave management almost stalled in its decision making process.

Please refer to the [NT Seafood Council Policy Position](#) Paper No. 3: *Commercial Allocations* for more information on the NT Seafood Council's position regarding commercial allocations.

Capacity of management

Staff within agencies tasked with fisheries management are often ill-equipped or trained to deliver on increased sustainable production, and rather are too heavily focussed on implementing overly cautious environmental constraints.

Illegal Foreign Fishing

Illegal fishing is occurring in the form of lost or discarded foreign fishing gear in Australian waters, or drifting into Australian waters from foreign fishing activities outside the Australian Fishing Zone. Whether connected to an actively fishing vessel or not, the gear is having an impact on TEPs and fish stocks well before it reaches the coastline, remote islands or snags on a reef. The fishing effort and wildlife impacts of such gear is currently poorly researched and completely unregulated.

Without an adequate idea of the scope of the illegal fishing it is difficult to identify where the most damage is occurring. There is a large amount of research conducted on 'ghost nets', notably by CSIRO and GhostNets Australia. However, much of this relies on data collected on nets which have reached the coastline. The amount of fish and wildlife caught, decomposed and disappeared from the net as it travelled through the water is currently not well understood.

Commercial fishers retrieve 'ghost gear' when they can and dispose of it ashore, often at considerable cost to their fishing operations. Northern Prawn Fishery vessels² recently pointed out the lack of clarity over the responsibility for 'ghost gear' of foreign origin, and have called for the creation of a dedicated body to deal with the issue in the Gulf of Carpentaria. Given the scale of the issue across all Northern waters, the NT Seafood Council would like to see a dedicated body tackling the issue Australia-wide.

Considering the drivers of illegal fishing in Northern Australian waters (poverty, overfished waters of our northern neighbours, forced labour in the seafood industry etc.), a regional approach based on practical solutions rather than purely punitive measures would be better suited to our role as a good neighbour.

² ABC Rural, *Fishermen and conservationists lobby government to stop 'ghost nets' from destroying marine life*, online <http://www.abc.net.au/news/2016-03-01/ghost-nets-cleaned-up-by-northern-fishermen/7207222>

Illegal Domestic Fishing

In the Northern Territory, illegal fishing tends to be limited to unlicensed small scale operations/recreational fishers selling their catch. The scale and scope of domestic illegal fishing is currently unknown due to a lack of resources of compliance and enforcement in this area. Anecdotally, the black market capture and sale of fish by unlicensed operators/recreational fishers is occurring regularly in the NT.

The most damage from this occurs is close to large population centres and areas of high recreational activity. The best methods of policing may be to increase fines and enforcement at the market end. With limited markets, policing should focus on illegal trade as opposed to policing our vast coastline.

Precautionary Principle

Within the context of Australian Fisheries the precautionary principle is adequately defined. Thankfully, through effective management measures in Australia, the high bar set to invoke the principle should never be triggered in Australian fisheries.

The application of precaution in itself is a greater problem. It is first and last, an excuse for inaction or restriction and needs far clearer definitions of how it is applied.

Environmental regulation

Focus should be on ensuring consistency within this area. The work towards harvest strategies in fisheries will be of great help. With consistent application of environmental legislation, the EPBC act will not need to reassess fisheries, however the requirement for a harvest strategy or equivalent should be considered.

Overlap between NT legislation and that administered by the Commonwealth relating to National Parks can create issues for some NT Fisheries. For example, the coastal boundary of Kakadu National Park is the 'low water mark' – a poorly defined boundary when it comes to compliance and enforcement.

The implementation of Marine Parks in Territory waters will inevitably lead to a reduction in commercial fishing access. Integral to the seafood industry's support and input to any Marine Protected Areas (MPA) process is that fair and adequate compensation or adjustment assistance will be paid for any unavoidable impacts such as those associated with the loss of access to fishing grounds and/or the value of commercial fishing licenses. In addition MPA's must be effective in meeting their goals and not simply used to reallocate access to our marine resources.

Please refer to the [NT Seafood Council Policy Position](#) Paper No. 6: *Marine Protected Areas* for more information on the NT Seafood Council's position regarding MPA arrangements.

Country of Origin Labelling

There exists an inequity in the regulatory compliance burden between Australian produced and imported product.

The Australian seafood consumer demands seafood from sustainable fisheries and farms. There is a strong community perception that seafood sold in Australian venues for immediate consumption is sourced locally. There is an urgent need for mandatory comprehensive labelling to ensure the consumer is not misled.

Two Australian Parliament Inquiries^{3 4} have recommended removal of the current exemption regarding country of origin labelling applied to cooked or pre-prepared seafood sold by food-service under standard 1.2.11 of the ANZ Food Standards Code.

³ The Parliament of Commonwealth Australia, Joint Select Committee on Northern Australia. Feb 2016. *Scaling Up, Inquiry into Opportunities for Expanding Aquaculture in Northern Australia* available online http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/Aquaculture/Report

The longer Australia accepts the anomaly in labelling regulation, the longer the seafood sector suffers from a lack of market transparency and Australia's trust of Australian seafood is compromised. The Northern Territory Government introduced regulations in November 2008 to make it a requirement for all venues to identify imported seafood at the point of sale to the consumer. It remains the only jurisdiction in the country to have seafood labelling laws introduced in dining outlets.

Please refer to the [NT Seafood Council Policy Position](#) Paper No. 7: *Seafood Labelling* for more information on the NT Seafood Council's position regarding seafood labelling.

Cost Recovery

All stakeholders and the community benefit from good Australian fisheries management. The costs of management should be born by different user groups for different aspects. However the commercial sector cannot be expected to pay for management in non-supportive systems that provide no certainty or in fact, fail to promote innovation.

Sector interests

The balance in allocations of access to marine fisheries that have been carried out to date have been fair, or the courts would have told us otherwise. The failure in fisheries management is that we have done very few.

In the absence of allocations, we have collectively allowed some sectors to 'bully' the process and vilify stakeholders, further slowing management change. Instead of well-balanced allocations we see sectors running often inaccurate campaigns to simply close out the commercial sector. No-one should underestimate the impact this has on people's lives as there is little more stressful than someone calling for your livelihood.

To point out the hypocrisy in this approach, one only needs to consider the impact of recreational fishing on Threatened and Endangered Species (TEPs), especially with regard to lost recreational fishing gear. There is little recording or reporting and minimal investment in mitigation. At the same time, the recreational sector use reported interactions from commercial fishers as a reason to close commercial fishing.

One of the major challenges and opportunities facing the commercial fishing industry is to re-engage with the community and other stakeholders in a positive manner. This engagement should be based on shared values and based on facts.

Commercial sector benefits to regional communities and supporting industries cover repairs, maintenance, training, refuelling, port infrastructure, marine providores, cold stores, wholesaler, processors, value adding, retail, restaurants, cafes, food tourism to name a few. It also provides health and enjoyment benefits to seafood consumers who are unable or unwilling to be involved in recreational fishing.

Fisheries production values like Gross Value of Production (GVP) under-represent both the overall economic value of fisheries, and their broader socio-economic contribution. They do not capture value adding activities, or the value arising from leverage through other fishing industry activities (e.g. onshore processing, repairs and maintenance, retail and restaurant sales). A 2009 World Bank study⁵ found that around 80% of the total value of wild catch seafood production is created during activities throughout the processing and supply chain activities.

⁴ Senate Standing Committee on Rural and Regional Affairs and Transport. Dec 2014. *Current requirements for labelling of seafood and seafood products* available online http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Seafood_labelling/Report

⁵ World Bank Report: *The Sunken Billions: Economic justification for fisheries reform* (2009). Available at <http://siteresources.worldbank.org/EXTARD/Resources/336681-1224775570533/SunkenBillionsFinal.pdf>

The concept of value, if used, must be based on comparable values for each sector. For example, the comparison of back to the boat fish prices versus money spent on recreational fishing tells us nothing. Comparing primary production values and recreational spend tells us nothing. We need sound resource sharing policy that covers economic, social and biological aspects. We must remember that sectors can coexist and this best meets community needs. Most important is that allocations are carried out as a priority, with processes to adjust them through time. Allocations are never perfect, but the current fear in decision-making is far worse.

Recreational fishing

Following the removal of nearly all commercial effort from the Darwin Harbour area, overfishing by the recreational sector has now caused serious concerns regarding some reef species around Darwin. This problem is being caused because clear and understood rights and responsibilities have not been allocated in many NT fisheries. An agreed and simple allocation process is required and it should be stressed that timelines and actual decisions are more important than perfect decisions.

Irrespective of which sector, we need effective tools to control catch and localised effort. The economic drivers that limit localised depletion in commercial fishing simply do not exist in the recreational sector.

Recreational bag limits are not working in the Northern Territory. Further, the introduction of tour operators and more access to vessels means the current bag limits are not supported by earlier barriers to fishing. Historically, you needed your own boat to fish local reefs. Now these can be accessed for minimal outlay (as little as \$150 in the NT).

Bag limits will always need to be decreased in response to increasing numbers of recreational fishers. In the NT, the time lag between researchers identifying overfished species and the introduction of decreased bag limits has been unacceptably slow, resulting in years of dangerous overfishing.

The political will to introduce changes to regulations for recreational fishing has also been historically weak, resulting in more regulations and loss of access for commercial fishing as blame is shifted to an easier target.

Indigenous fishing

Indigenous fishing rights are well recognised in the Northern Territory. Like any sector, within some reasonable limits, there should be access to modern equipment. The overarching consideration for all sectors should be the sustainability of fish (and wildlife) stocks and all sectors managed accordingly with appropriate allocations, fishing methods and gear.

Legislative requirements in the NT require consultation with all Traditional Owners. It is simply unreasonable to expect any member of the public, indigenous or otherwise, to engage in fisheries management at this level. Consultation with Traditional Owners needs to focus on broader issues.

Thank you for the opportunity to provide a submission to the Inquiry into the Regulation of Australian Marine Fisheries and Aquaculture Sectors.

Yours faithfully

Rob Fish
Chairman