



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

INQUIRY INTO MARINE FISHERIES AND AQUACULTURE

MS M CILENTO, Presiding Commissioner

TRANSCRIPT OF PROCEEDINGS

**AT FREMANTLE
ON MONDAY, 17 OCTOBER 2016 AT 9.30 AM**

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MS CILENTO: Good morning, everyone. Welcome to the public hearings for the Productivity Commission's inquiry into marine fisheries and aquaculture following the release of our draft report in August of this year.

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My name is Melinda Cilento and I'm the presiding Commissioner on this inquiry. Before we begin, I would like to acknowledge that we're meeting on the lands of the Wadjak people and pay my respects to elders past and present.

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The purpose of this round of hearings is to facilitate public scrutiny of the Commission's work and to get comments and feedback on the draft report. This is the last of the public hearings that we'll be holding. Following the completion of these hearings, we'll be working towards completing a final report to government having considered all of the evidence presented at the hearings and in submissions as well as other discussions.

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Participants and those who have registered their interest in the inquiry will automatically be advised of the final report's release by government which may be up to 25 parliamentary sitting days after completion. Our intention is to have the report completed by late December. We like to conduct all hearings in a pretty informal manner. But I would like to remind participants that a full transcript is being taken. For this reason, comments cannot be taken from the floor. But at the end of the proceedings I will provide an opportunity for any person wishing to do so to make a brief presentation. I don't think we've got any media in the room.

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Participants are not required to take an oath but should be truthful in their remarks. Participants are welcome to comment on the issues raised in any other submissions which, of course, are posted on our website. The transcript will be made available to participants and will also be made available on the website following completion of the hearings.

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Before we ask our first participant to start off, I do need to advise you of evacuation procedures to comply with Commonwealth occupational health and safety requirements. There are two exits from the room; here on my right, your left, and also at the back where you entered the room. In the event of an emergency, we would proceed through the back door, past the lobby and straight out into the street where there's a meeting point out on the street. If that exit were blocked for any reason, we're able to proceed out to my right and in the same direction out through the lobby. If we need to do that, my understanding is that we'll have hotel assistance.

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5 If you require any assistance at any stage, Chris from the inquiry team is here with me. Please see him and he can help you out. Coffee and tea is out the back at the entrance and will be available until 11.00. So make sure you grab a cup before then. Can I now welcome George Kailis to make a presentation for us?

10 **MR KAILIS:** Thank you, Commissioner. My name is George Kailis. I'm executive chair of the MG Kailis Group, professor of management and law at the University of Notre Dame, Fremantle, and a director of the West Australian Fishing Industry Council. I'm not here representing any of those parties, but I certainly am drawing on my expertise and my experience with those organisations.

15 My sort of preliminary statement really relates to some of the broad themes underlying the report and I suppose a request to the Commission perhaps to highlight to some degree to a high level questions of public choice in relation to fisheries management. A key early theme I'd like to rest upon is the legal nature of fisheries. I don't do this to be some sort of legal pedant about these issues or economic pedant, but there's a difference between a common pool resource, which is an economic concept - and I'm referring here to Grafton's 2012 - and Tom Kompas, Australian authors, economists - about common pool resource.

20 The essence of a common pool resource is that where use is rivalrous, where one person's use harms others and the ability to exclude users is difficult. It's distinguished, but not always clearly, from a common property resource, which is a resource over which a community or group of individuals have access to and, to some extent, able to exclude others. And some of these issues about rivalrous use. The reason I think it's important to keep the distinction separate is that there's a tendency to confuse questions of law with questions of economic theory at different times.

30 So where economists have started using common pool resource such as Tom Kompas and Quentin Grafton because the common property argument was - people had clearly seen that it implies that somehow fish resources is the property of the community. The Commission at page 41 does use the word "community owned". The essence of fish resources is that they are unowned until captured; and secondly, that the state under common law and almost certainly under the law of Australia doesn't own fisheries. This is despite statements to the contrary in some legislation such as Victoria and Tasmania.

40 But it's fairly clear from the context that those statements of ownership are really basically to avoid problems with section 90 of the Australian

Constitution while those states are trying to tax access to those resources. The key statement I think - the best summary of this, I'd rather say, is actually from the High Court in the case Harper v Minister for Sea Fishery. This is the abalone fishery 1989 in Tasmania. There was
5 questions about taxing control, section 90 and so on.

So Brennan J who led the lead decision made it - there was a lot of argument over this question of ownership and did the OCS arrangements give ownership of resources that would otherwise be unowned. Brennan J
10 after having extensive comment on that, he just said, "Look, the legislative arrangements between the Crown and Tasmania testifies to the consent of the Crown to the creation of those rights," in this case quota rights. He referred to the creation of rights rather than transfer of rights.

15 In other words, if the state owned it, it would be - or the Commonwealth that owned it, it would be transferring those rights to the state. He's just saying, "Look, these are just legislative regimes." In a similar vein - and I think this is one of the best modern statements in relation to what it is from both a legal sense that we're looking at is the joint judgment of
20 Mason CJ and Deane and Goode JJ. This is a rare unanimous decision by the High Court, by the way. It doesn't happen all the time.

It says, "What was formerly in the public domain is converted into the exclusive and controlled preserve of those who hold licences. It is
25 entitlement of a new kind created as part of a system of preserving a limited public natural resource in a society which is coming to recognise that, insofar as such resources are concerned, to fail to protect may destroy and to preserve the right of everyone to take what he or she will may eventually deprive that right of all content. Under this licensing system
30 the general public is deprived of the right of unfettered exploitation."

I really think it's an excellent summary. But the comment there is it's an entitlement of a new nature. It doesn't draw on some pre-existing ownership. Why this is relevant to fisheries is that fisheries, because of
35 there isn't this fundamental underlying ownership, tends to be in the public domain of a range of conflicting rights and duties. The American author Blomquist talking about water rights, which in many respects have actually a closer relationship to ownership of land than fishing rights have, he mentioned that the issue here is that individuals may contest not only
40 the same rights but also different types of rights, different uses for resources, also multiply the types of rights involved and multi-organisational arenas provide multiple decision points. I think that's all relevant to fisheries.

45 As I said, the relevance of all of that is not so much in sort of the legal

5 questions. So I think it is a fairly orthodox statement of the legal position. But it heightens the context for rights in fisheries and rights-based management. In particular, the concept of public choice competition where parties have options other than to compete in the public arena by seeking advantages, vote trading, log rolling and the whole range of those sort of mechanisms.

10 In particular - and I establish to keep these fairly briefs, these comments - I think there's a question of perverse incentives in relation to allocations and reallocation. As soon as the possibility of a reallocation away from existing users arises, then there's a choice to go within the system or outside the system. When I say "outside the system", into the public choice competition domain. It needs to be without a concept of compensation or a priority generally of prior users. Then you heighten that competition.

20 Furthermore, unless there's a concept of compensation, then it's a constant ferment. We did a Toohey Commission inquiry about 14 years ago in WA which helped provide the basis for the integrated fisheries management system in WA and the comment that the state should be paying compensation for transfers. That's because Toohey J, the High Court Justice, realised that otherwise every allocation and reallocation decision, it never ends because if there's no possibility of compensation, there is no cost to claiming for a new reallocation. There's only a political cost at a political level and you heighten the political action.

30 It's not good enough just to have a generic policy without something like compensation or prior use rights. Then the risk is then for intense competition. I note in the federal sphere in the Commonwealth legislation at least it doesn't provide complete security for fishers. But what it does provide is that if a fishery scheme is terminated and then re-instigated at a later period, the people in the terminated scheme have a first right of access to the new scheme.

35 At least to some extent, it reduces the interest of those in the industry to terminate a scheme to get better rights. We've had some effect of this also outside the fishery system, taking into account Blomquist's comments about multi-organisational regions and multiple types of rights involved. We've seen in Western Australia competition between effectively different sectors of the bureaucracy in relation to management and control of fishing rights.

45 Once again, ownership is not the issue; it's control and regulation. There's multiple regulation and multiple agencies involved. So we've seen the Fisheries Department put forward an aquatic resource,

Management Act at the same time as the Conservation Department put a Biodiversity Control Act. These Acts have inconsistent management regimes and the Biodiversity Act, for the reasons that you've referred to on page 92 about threaten endangered and protected species, works on this prohibition scheme even though it's clear that some take of protected species is likely, whereas the new Fisheries Act that's proposed for Western Australia works on a risk management and planned activity type basis, which is much more consistent with modern concepts of fisheries management.

So there's this competition to appear to be more ingrained, and that's ended up - and I won't go into the background of why that was perverse and the perverse outcomes. But it is this competition occurs not only between public actors but within bureaucracies for control over the right to management the marine environment. But, once again, that's inherent in the system. The question is, are we setting up appropriate incentives in order to limit that public choice competition and especially competition where the outcomes are likely to be perverse?

They're my introductory comments. Just some very brief ones on Indigenous fishing. You've got the correct definitions here at page 32 in the recommendations between customary fishing and native title. But I think insufficient recognition that what's called customary fishing in some states has nothing to do with customary fishing in Western Australia. It's really just effectively an exemption for Indigenous peoples, whether they're acting - and I said the correct definition of "customary fishing" is there - whether they're acting in that way or not.

Now, that actually has some interesting implications. For example, if you're up in the Fitzroy River and you're an Indigenous group that's got some very strong native title rights up there, it's very difficult for you to call upon the state to stop people who would be fishing in that area unless they are - who identify as Indigenous. If it was customary fishing and native title, that's one level. The problem is that a lot of what's called customary fishing does not actually meet the definition that the Commission has outlined, as I said, a correct definition there; fishing in accordance with customs and so on and so forth.

MS CILENTO: Just on that, what do you think the right solution for that is? I mean, if we've defined it appropriately, are you suggesting we make a further recommendation in respect of the treatment of non-traditional owners?

MR KAILIS: I think that it's either going to be a race-based Indigenous fishing or customary fishing. I think the recommendation should be that

the state should bring their definitions in line with the terminology that you've used about customary fishing. And that some of that terminology relates back to the 2004 guidelines which the Commission refers to.

5 **MS CILENTO:** I think what we're sort of suggesting is that the definition of "Indigenous" for the purposes of being able to fish would be something that would be something that would be determined in consultation with local Indigenous groups. Are you suggesting that if they themselves determine that Indigenous Australians, including those who
10 are not from that area, if they were happy for them to partake as guests or visitors, if you like, in customary fishing, that that should not be for them to determine?

15 **MR KAILIS:** This is where it's hard because now this is a problem with customary fishing; gets down to the particulars. The New Zealand system of Iwi, reserves and so on, suggested that at least there there is a possibility of local management that's effective. But the problem you have then is the intrusion of the commercial economy into the Indigenous economy and the difficulties that incurs. I don't actually have the
20 solution. But I suppose I'm saying at this stage is at least the problem should be clearly identified, that customary fishing shouldn't just be fishing that is effectively an exemption. It really should be fishing that is in accordance with the custom and practices of the groups concerned.

25 Generally it's up for those groups to determine those customs and practices, noting here that we're not talking about native title. So by and large we're talking about groups that have failed to demonstrate the legal tests in Australia in relation to native title. If it's native title fishing, then the fishing is in accordance with the determination of the court as to what
30 the nature of that native title is. And that varies from up in the Torres Strait commercial rights and the Akiba case to just sort of very generalised rights.

35 There's a bit of a problem here - I won't say problem. The stronger generally - in my experience, you look from north to south of WA, the more intact your culture is, generally the more rules and regulations that you have in relation to sustainably fishing. The further you go down south the less they appear to be in place. That's a West Australian observation. I can't say how it relates to other states. So this is where it
40 gets very difficult.

But I think the first thing is to recognise that customary fishing should be customary fishing. Even if groups can define for themselves, it should be said within this context of non-commercial, communal and so on. The
45 rights to share within a community and communal sharing are sometimes

difficult to specify. But they haven't actually been a problem so long as - it's my understanding in practice, so long as it's clear that they're not specifically commercial.

5 The biggest risk here is in high value, high susceptibility species, abalone and maran in Western Australia. These may require high levels of protection because of the innate fragility of the species. But generally, as the Commission notes, as a general prospect, generally it's not been a problem. But I think there are specific instances where it's not going to work.

10 For a similar issue, the Commission's concept of giving priority to Indigenous fishers, I think that needs a bit more work. That hasn't generally worked as well as it was thought in Canada because no one says what priority means. So if you've got a fishery like maran where the Indigenous people of Western Australia could easily take a hold of that, does priority mean that others have no rights? Because in Canada the rule was first priority Indigenous, then recreational, then commercial. But then people said, "What does that priority actually mean?"

20 **MS CILENTO:** I think we've explained it in the report as an allocation consistent with customs, not just take all that you want.

25 **MR KAILIS:** The problem is that conflicts to some extent if they've got native title as well because native title, as the Karpany case in South Australia made clear, native title protected by provisions of the Native Title Act means that there's an argument there that they could take the whole of the resource, they don't need to share it with anyone else because they're not restricted by the Fisheries Act and cannot be. If it meets the conditions of the Native Title Act, which is communal, non-commercial and so on. So there's a bit of a lacuna in the law at the moment about this issue.

30 No system is perfect, especially when you're trying to mesh Indigenous law and custom - two separate issues - with Western law.

35 **MS CILENTO:** Yes. Can we go back to your opening comments? I guess just to assist us in terms of reflecting on where we are with the draft report, have you looked at the recommendations that we've made or the sort of key findings on the way through? Are there specific changes that you would like to propose?

40 **MR KAILIS:** I think a good example is page 92. This is really where the more upfront recognition of public choice, which is a question of compensation there, which is particularly in relation to some entitlements

and the reallocation of rights. But there's a number there is in the report - give me a second to go through them. I'm trying to find the recommendation page.

5 **MS CILENTO:** There's a summary of recommendations at the back of the overview; so page 29.

10 **MR KAILIS:** You can see my comment about priority share is the issue there, that makes sense, provided you can actually give them a priority share and still provide for other users. But looking at commercial fishing, there are things like recommendation 3.2, which is clearly articulate policy objectives, review should occur when harvest strategies are revised and some of the other comments about draft recommendation 2.3, for example. Why is it so difficult to get this allocation of access to fishery stock between different sectors?

Part of that is because unless you right up front acknowledge this question of what's going to happen with a reallocation, sectors will die in the ditch over it because there's no end game.

20 **MS CILENTO:** This is fundamentally a point about recognising existing users and compensation.

25 **MR KAILIS:** No, there's a range of areas. For example, there was one other area - there's a couple of areas there you've mentioned is sort of like why is it so difficult to get people to do certain things or observe - for example, the question of the level at which decisions are made in fisheries management. So it should be at a lower level. The reason it's a higher level, because a higher level is where the payoffs for public choice competition exists. So if you do it at a technically lower level you remove the political process out of the game and there's actually payoffs for politicians at different times to being involved in the political process. So they're directly consulted on decisions.

35 I think that's another area where public choice type competition gets in the way of sensible management of fish resources. So you can't just do it at a technical level because the payoffs exist at the political level in order to - and the trade-offs. So that really requires that the minister or the political wing stay involved. I'm just using the compensation as an example. But I think there's a number through the report where you make sort of comments that this should have happened or we should have moved to quota faster - we could have, I should say, a number of these areas. But I think you do identify without mentioning it the public choice problems with moving to quota.

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5 You mentioned the difficulties and the existing rights and those things. But I don't think necessarily that sort of downwards to the resource involved but not the upwards. So that competition exists. For example, moving to quotas in Western Australian rock lobster fishery was significantly deterred for about a period of, in my view, five years from the issue of report - the Monahan report suggested that return to the state - or the improvement to the value of the fishery, I should say, was somewhere 50 to 70 million dollars of additional profit. Yet, the state commissioned all those reports and yet lobbying led to that being stopped.

10 Now, if you're a what we call high liner, if you catch more than your quota, then you have a strong incentive to lobby to prevent quotas coming in place. A lot of the lobbying from a personal perspective came from high liner fishers who outperformed the general, because that quota benefit, that's the average. But a high liner may actually get a bigger share of the resource by staying away from quota.

20 **MS CILENTO:** Just so I understand this, your argument is that by turning that into a political decision, that assists in facilitating the decision?

MR KAILIS: No, other way around. It deterred it for five years until it became completely unsustainable.

25 **MS CILENTO:** Just for my own clarity here, so you're saying the payoffs exist at the political level.

MR KAILIS: Which they engage.

30 **MS CILENTO:** That means you agree or disagree with the idea that we've put that day-to-day sort of management issues should reside at a lower level?

35 **MR KAILIS:** It should, but I think without specifically mentioning some of the drivers here, I don't think it's a fair assessment of some of the hurdles which need to be got over. As I see, one of the advantages of the Productivity Commission is the saying of what is often unsaleable by the public sector. The reason we don't go there is because the Minister doesn't want to because that's a potential loss of power. I mean, what do we mean by a loss of power minister who's not otherwise engaged in fisheries? Loss of power is a loss of power in the political process.

40 So if key issues are made at that local level - so part of the reason why we moved to quota was the Minister got sick of being involved in every decision, closing and opening and all those sort of things. But they all had

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significant consequences for distribution of benefits from the fishery. So, of course, people were - I mean, he was upset because people lobbied him directly. But, of course, they were because it was a limited entry fishery, you had high liners, people in different ports. You had different payoffs because of different decisions. And all of that was constantly going on.

I don't want to make it only a compensation scheme. It's just that compensation brings it - so it's a possibility of a reallocation brings out the worse in the system. So it's the most egregious case, but I think there's lower level consequences as well. And don't even get me on why OCS hasn't been completed because you can argue the same public choice issue. Now, why should New South Wales give up? It's really a competition between levels of government.

MS CILENTO: Aside from what we've put in here and the arguments around public choice, how do we do this better?

MR KAILIS: I think noting upfront - I mean, that's where the two inquiries were important to Western Australia, because he actually noted upfront this competition and he said, "Look, unless we get a long-term allocation, then the different sectors will be arguing about the resource until there is no resource left." That's what got WA down this road of integrated fisheries allocation and so on.

Now, it's by no means perfect but at least it was a recognition of the problem and a mechanism for a solution. But I think without a recognition of the problem in the Toohey report I'm not sure that we really would have got going. Because, I mean, when you're doing a resource reallocation often you find one group, like the high liners in rock lobster, they actually have an advantage in the system to staying even though there's - no one challenged the Monahan report, the \$70 million was there, at all.

But people said, "We didn't need to go there and we didn't want to go there." Yes, it did trigger, as your report mentions, it triggers a change in people's rights. As I said, I think you've covered that aspect quite well. But that's within the fishing industry level, not that there's competition for control and power at other levels as well at the political level and between departments.

MS CILENTO: Okay. Sorry, I'm just laughing because I'm reflecting on the scope of the inquiry.

MR KAILIS: I think you could put it in the sense of what might be some of the - Kurt Lewin in How to Get Change said you can increase the

driving factors or you can reduce the level of the restraining factors. Here, I suppose it's a request to reduce the level of restraining factors. I'm not unrealistic here. We haven't moved into a - we've got some recreational fishery people. We haven't moved into an era of (indistinct) on all aspects of recreation fishing. But the arenas have been narrowed and the perverse incentives have been reduced.

I'm not suggesting you can eliminate them, but I am saying that I certainly believe, put it this way, as currently expressed, your report could be read as let's go for it for a new reallocation for all fisheries based upon marginal benefit to the community and not to worry about the implications of those with existing rights. Could I just make a technical comment on that too?

MS CILENTO: Sure.

MR KAILIS: In relation to the question of use of options and latent fishing and so on, I do think that you should look at some of the more recent research by John Ledyard from California Institute of Technology. He's done a lot of work for the New South Wales Government. I was in a recent academic conference and he points out that because of the public/private mix nature options on a both theoretical and, he believes, practical level will not go well in the best interest in a fairly simplistic sort - when I say "simplistic", sort of direct option approach.

It's because of some of these public policy issues that are involved. He felt that - and also he gave a future review about fishery stocks and what you'd end up is just getting artificialities where fishers who are overly optimistic about future stocks or their ability to implement stock management may end up overbidding and driving out those who are more realistic, leading to another round of overcapitalisation and potential collapse.

MS CILENTO: What was that name again, sorry?

MR KAILIS: L-e-d-y-a-r-d. The proceedings aren't out yet, so otherwise I would do it. But he's actually done a lot of existing work. But he's actually contradicted some of his previous work about design of options. He's done a lot of extra work through the California Institute of Technology with a whole lot of simulations. The simulations show that you may not get a positive community outcome and it's actually quite tricky because of this question about future stock levels and rights and ownership. So that's more of a technical issue.

He's not saying options don't work, but I wouldn't want somebody to read

the recommendation and think, “Well, we could just apply that in a generic sense.” His options are interesting to people about how we deal especially with latent effort. But there’s been some huge screw-ups in America - Chesapeake Bay crab, for example - especially if you haven’t got your management system right, which is no surprise. No option is going to be better than the rights that you’re auctioning.

Just in summary, unowned resources, there’s competition for their management. There’s competition for regulation as well as competition to take the resource. Competition to take resource is well covered in the questions here about quotas and so on. But I think there’s another level of competition that makes management of marine resources particularly problematic. It’s to that level - as I said, it’s the public choice level that I think that the report would be improved by a recognition that some of the restraining forces here are not people just being sort of ignorant or dumb, but there are countervailing forces that prevent either adoption of quota, decisions being made at “the right level” and questions in relation to allocation, reallocation and auction.

MS CILENTO: Thank you very much for that.

MR KAILIS: Thank you.

MS CILENTO: Can I call on Andrew Rowland and Leyland Campbell from Recfishwest, please. Good morning to you, both. I’m happy for you to make any opening statements you’d like or to address specifically any of the recommendations or findings in the report.

MR ROWLAND: Thank you very much for having us and for the invitation. Andrew Rowland, chief executive officer of Recfishwest.

MR CAMPBELL: Leyland Campbell, operations manager for Recfishwest.

MS CILENTO: Thank you.

MR ROWLAND: Recfishwest is the peak body in Western Australia. We represent the interests of 750,000 West Australians who go fishing at least once a year. Our purpose is to essentially ensure great fishing experiences for WA forever. Our commitment to do that is essentially to protect, promote and develop sustainable, safe, enjoyable and accessible fishing for the benefit of the community. We have put our submission in and thank you very much for that opportunity. We take it as read.

I’ll just quickly take the opportunity this morning to perhaps elaborate on

some of the elements. We're really keen to elaborate on the development of recreational fishing and a lot of the opportunities which exist in that area and perhaps some of the current constraints which inhibit some of that development. We'd like to talk about harvest strategies and what we believe they are and the benefits that they can provide to recognising the social and economic objectives of fisheries management.

We also just want to touch on an element of the draft report which we think didn't, in fact, tie close enough linkage from aquaculture perspective to its benefits to recreational fishing. Then in terms of recovery of costs or costs for management, we think there's some opportunities for co-management and the like. So they're the four main areas, I think, that we'd like just to add some value to our submission.

MS CILENTO: Thank you.

MR ROWLAND: In terms of development of recreational fishing, we've moved quite, I think, rapidly in the last decade or so from a very catch-focused sector to now a very experienced-focused sector. Recfishwest really does focus a lot of our efforts on maximising and optimising people's opportunities to go out there and enjoy fishing and the aquatic environment that we have. Recently we've been doing quite a bit of investment in enhancement of fishing opportunities through artificial reefs which do lend themselves to improve fisheries productivity.

But in the short term our goal has really been around optimising the social value of habitat enhancements. We see artificial reefs in creating new opportunities, creating more diversity in terms of opportunities for when people get out on the water and spend their time and money. At the moment they're purely focused around the social dividend. But we do believe some of the research which we're using to underpin them at the moment will lead to fishery production benefits.

In a similar light, we're also investing in fisheries restoration or habitat restoration through shellfish reefs, particularly in nearshore areas, which we believe will also have fishery production benefits and which obviously link back to the benefits of more participation, greater experience and better fishing quality for the community.

We also believe that these sorts of developments such as artificial reefs can also reduce conflict between the sectors in terms of better resource sharing outcomes. We are at the moment having some issues with red tape in terms of the development that we're going through. Leyland has done some quite significant work with Recfishwest in the recent few years dealing with the Commonwealth Government from an approvals

perspective and the fact that artificial reefs for the purposes of habitat enhancement aren't actually recognised at the moment properly in the policy space. It really is sea dumping requirements that we have to jump through rather than purpose-built or fit-for-purpose habitat enhancement technology, which is supported by science and some of the work that we've done more recently around bringing some of this technology to WA that has been developed in North Asia, for example.

We'd be really keen to have the Commission recognise the importance of these particular investments to return value to the recreational fishing community. Indeed, I think there's some value to the commercial fishing community and also the aquaculture industry around things which we're seeing such as in Flinders Bay, for example, down in Augusta with abalone ranching, which is having secondary benefits in terms of creating new habitat for rec fishing opportunities.

We think there's benefit in terms of getting greater streamlining of some of the policies and also some recognition that these are highly valued assets which do, indeed, provide diverse fishing opportunities, have got the ability to increase participation and make the most of, I guess, a resource which is coming under more and more pressure and help managing some of that pressure to other potentially less vulnerable species and the like.

MR CAMPBELL: Some of that red tape includes 40 years monitoring requirements on these reef systems, which certainly puts it out of the range of possibilities for community groups, local governments, et cetera who might want to investigate their options in implementing them.

MS CILENTO: So 40 years subsequent to - - -

MR CAMPBELL: Yes, subsequent to deployment (indistinct) of reef monitoring.

MR ROWLAND: We've moved away from, I guess, materials of opportunities, shipwrecks and old tyres and car bodies and the like, to, I guess, purpose-built steel and concrete reef units which have technology put behind them. We're only in the infancy here in Western Australia and we're investing a fair bit of time and effort in terms of monitoring these things and looking to exactly what the benefits are. But at the moment, yes, we're really keen for the Commonwealth in particular to catch up with the aspirations of the rec fishing community in this space.

MS CILENTO: I think that's pretty clear.

5 **MR ROWLAND:** I guess this links quite closely to harvest strategies. I suppose from our perspective sustainability is always the benchmark of fisheries management. But once we have a resource which is deemed to be sustainable as well as truly has a hand in terms of the ecological or biological sustainability of the resource, then what we need to focus on is how we optimise the value of that resource back to society.

10 Really, the two main headings that we do that around of an economic contribution or a social contribution or a combination or generally a combination of both. We believe there's just a need to better capture and articulate each of those particular objectives, whether they be social or economic, in terms of getting a better handle on how we're managing fisheries. We need to focus on developing, I think, key metrics so we can evaluate the performance of the fisheries against those particular objectives.

20 Sustainability, as far as recreational fishing communities is concerned, is just a given. That is an obligation of our fisheries managers through the government as the stewards of the resource to make sure that they're sustainable. But then I think the real crunch comes and the challenge is where we need more information and we need to get better sophistication around is how we optimise that value back, either through economic or social contributions, back to the community.

25 **MS CILENTO:** Can I just follow up on that? I mean, one of the things that we, I think, highlighted in the report which we've grappled with and many people are grappling with is how best to do that in the sense that there's clear economic measures of commercial value, for instance. But it's harder to get a sense of measurement of the sort of social benefits that accrue to recreation fishers and the broader community from that activity as well as just getting a handle on the level of activity and its impact in terms of fisheries management.

35 **MR ROWLAND:** Yes. I think we could start by perhaps changing the culture within some of the regulators around actually asking that question from the get-go. I think rarely do we even get asked that question of what we're trying to achieve, the management of a sustainable fish resource. A lot of the time there's assumptions. So harvest strategies really do give us an opportunity to sit down and have that conversation with the community around what their aspirations are for that return and then I think it's only once we've asked those questions can we effectively work on trying to articulate that in words and then focus on how might we measure that and how might we measure the performance of that particular objective as we go forward.

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It's something which we're, I think, in WA just scratching the tip of the iceberg around. From a rec fishing perspective, it could be around satisfaction, for example. It could be around catch. It may be around catching lots of fish or it may be around catching a few trophy fish. It might not even be around catching. Recently we did a survey of maran, our maran fishery in Western Australia. We asked this question to a large group of licence holders. The number 1 objective of buying a licence and the number 1 aspiration of licence holders was to go out into the bush and spend time with family and friends. Catching a maran was, I think, third on the list of aspirations of people that actually buy a licence.

So it's only when we start asking these questions can we get an understanding of what we're working to manage the resource for and how we best put management practices in place to deliver that value back to the community.

MS CILENTO: In the report we've clearly identified that recognition of the broader value that's derived from the resource needs to be acknowledged and that through the harvest strategies and overarching harvest strategy policy that there is an articulation of that and the sorts of things that will be taken into consideration and how the decision-making process, if you like, will work.

I guess one of the things we keep bumping up against is a lack of information. So would you see Recfishwest as having a role to play in doing more of the survey work? We've advocated for surveys around taken - and recreational fishing activity more generally. But if you're talking about familial aspirations and the types of different ways in which they derive benefit, is that something you see your organisation playing a role in developing that sort of information flow, if you like?

MR ROWLAND: Yes, absolutely. I think, touching on, I guess, the cost of managing these resources as part of more of a - we have quite a well-formalised co-management arrangement in Western Australian with the Department of Fisheries. We've got a service level arrangement around representation and consultation. But I think there's definitely scope in WA and more broadly across Australia to better engage groups such as ours in those types of surveys, whether it be trying to get people together in terms of developing what their aspirations are from a social perspective, and then providing input in terms of what the metrics might be to measure those sorts of things, but then that flows right through to also some of the other areas where there's a dearth of information such as catch estimates and also other estimates, economic contribution and those sorts of estimates.

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5 So we have strong engagement with the community, we believe that we
can offer very cost-effective ways to run surveys, we currently do some
citizen science programs from a biological perspective on the artificial
reefs, using volunteers to deploy baited underwater video cameras at very,
10 very reduced costs that it would otherwise take a government department.
We get much greater, I guess, engagement with the community as we're
going on this journey together, and better senses of awareness and respect
for the resource and stewardship flows on through that when the
community are engaged in these sorts of programs. So I think, absolutely,
15 there is opportunities to strengthen those co-management arrangements
and perhaps put more formal arrangements in place to gather and collect
that data at the community level.

20 **MS CILENTO:** I mean I'm expecting that within your organisation
there's quite a diversity of members and engagement if you like, I mean
we all know that a group of people who fish on a very regular basis catch
a lot of fish, there's other people who might only fish a couple of times a
year, I mean how do you think you're able to capture that diversity of
benefit and engagement if you like?

25 **MR ROWLAND:** It's a challenge. I think most people like to go fishing
to relax, unwind and get away from these sorts of things. So we've got
very strong networks at the moment which we've developed over time, we
communicate, we have got 65,000 subscribers and supporters that we
communicate on a monthly basis, 8000 that we communicate on a weekly
basis with, and because it is a pastime that does elicit a large amount of
passion we do have higher levels of engagement than you would against
other types of outdoor activities, and we've see that. It is difficult. I think
30 the avid end of the spectrum generally does represent, I guess, most of the
effort and most of the catch. So engaging with those people, we are going
to get, I think, the best information in terms of its robustness, but yes,
given the fact that estimates put it around 750,000 people in this State go
fishing once a year, then that is quite difficult to do.

35 **MS CILENTO:** Sorry, I'm going to go off on a slight tangent here. With
your 65,000 subscribers, do you communicate with them around
regulations and requirements for good behaviour if you like on the part of
recreational fishers?

40 **MR ROWLAND:** Yes, absolutely. Our role is to educate and promote
sustainability messages and I think by being integrated as a not-for-profit
community organisation, we speak the language and discourse that our
stakeholders understand and so it is more at-level and we believe we can
get better traction in terms of getting those messages across and also,
45 equally, I think we're more trusted, Recfishwest, our currency, trust is our

currency, that's really what we exist upon and we believe that we're in a much better position to have two-way communication with the community on these sorts of things as well.

5 **MS CILENTO:** Thanks for that. Sorry, I've taken you off track.

MR ROWLAND: No, that's fine.

10 **MS CILENTO:** I think on harvest strategies, you also wanted to make some points about aquaculture and the benefits from recreational fishing and cost recovery I think?

15 **MR ROWLAND:** Yes, so I mean the cost recovery stuff I won't jump to now because we've just pretty much touched on it, and that was really where I was wanting to go with the cost recovery. Yet I think if we engage, through organisations such as ours, and whether it be - from an Australian perspective, effectively resourced and governed peak bodies do have a role to play and I think that when they are effectively resourced and governed they can provide cost-effective integration into the community
20 to help gather some of this information and in a much more cost-effective way than otherwise would be done through some of the more traditional means. So that's really probably all I've got to say there in terms of strengthening those co-management arrangements.

25 The other thing, I guess one other thing which I will to that is that it does empower the community as well I think, and we've seen that, they do feel more involved and I think they do take on a greater level of respect and understanding as to the reason and rationale behind the rules. I think when they understand the reason and the rationale then they support the
30 rules and will change their behaviour accordingly. I think the other thing, also, it does offer a greater level of transparency as well from a community perspective and so therefore the outcomes are generally more trusted at the same time.

35 **MS CILENTO:** Do you think that applies if it's an outcome that they don't necessarily agree with as well?

40 **MR ROWLAND:** Yes, I do, I honestly do. I think if you've got well-resourced and well-governed peak bodies then they will show leadership. Recfishwest have got plenty of track records where we'll stand up and take the bullets when we have to from the rank and file for, I guess, the strategic greater good. So I think the opposite to that is when you do struggle to get the resources and, I guess, the governance arrangements around it and it turns just purely back to political
45 intervention rather than leadership. No, nothing else there.

MS CILENTO: And aquaculture?

5 **MR ROWLAND:** Yes, aquaculture. So this one links pretty closely to
the first one I was talking about, more broadly around development of rec
fishing and, really, the linkage wasn't probably picked up in the draft
report as well as it could have been I think. We currently have a very
good partnership with the aquaculture providers in Western Australia,
10 around assisting in restocking and stock enhancement for recreational
fishing purposes. So we've had recent successes around the Swan River
prawn restocking project where we've put just over four million prawns
back into the Swan River over the last three or four years and that's led to
a rejuvenation of that fishery; early days and we'll see what happens but
15 we believe it's on the way to potentially restoring a culturally and socially
significant fishery that we've lost, that we did have in the 80s.

Similarly, from a development perspective, we've got opportunities here
for inland stocking in particular, so obviously aquaculture plays a strong
role there. We recently did some restocking activities in the East
20 Kimberley as part of the Kimberley Science and Conversation Strategy
where we restocked or reintroduced 550,000 Barramundi fingerlings into
Lake Kununurra, which is an area up there which is 55 k's of flooded river
channel, for which had a great barrier on it where the Barramundi couldn't
get through and that's now started to turn into some pretty positive
25 recaptures.

So I think there is absolutely a role that rec fishing plays in terms of
aquaculture and aquaculture development, we've invested quite a
substantial amount in aquaculture in WA through the facilities that we
30 have here, which I think helps provide at least some support and
investment in infrastructure from the aquaculture industry, which then
allows that to flow through into broader applications, from a broader
aquaculture industry perspective.

35 Obviously the other thing from an aquaculture perspective is that we do
invest in research around aquaculture. So the prawn project had
significant research sitting around the back of it and it was the first time
that particular prawn species had been cultured in captivity. Similarly, we
ran a program last year around collection of snapper eggs in Cockburn
40 Sound, whether the snapper spawn, in an effort to see whether or not that
was a viable way of snapper production, to potentially maybe one day iron
out pulses in the significantly variable recruitment that we have here on
the west coast with some of the species such as snapper. That was a
successful project and it's the first that's been done on that particular
45 species, which has potential information and technology transfers that

could go towards broader and larger aquaculture industries. around like species in Western Australia or Australia.

5 So I think the linkage between rec fishing and aquaculture is one that is quite important and it's something from a rec fishing perspective, and my organisation's perspective, which we highly value. The capability of the particular aquaculture expertise and facilities that we have in Western Australia add value to rec fishing outcomes which the community do value quite highly.

10 **MS CILENTO:** Thanks for that. One of the recommendation in the report, which may not surprise you has attracted a little bit of interest in a number of jurisdictions, is the recommendation around licensing. WA has a licensing scheme for recreational fishers which seems to be quite well-supported and it would be interesting to have your perspectives on what went right if you like in terms of the decision-making around that, the implementation and why it works. I mean some of the things that you've already touched on are the very issues that we highlighted in the report as being beneficial, including that sort of education process, better understanding, what's going on, the interests of rec fishers and/or the like, and similar things. So I'd be interested in your perspectives on that in terms of what we might say to some other jurisdictions about how they could do it right.

25 **MR ROWLAND:** I think it's a case when the community see tangibles from their licence contributions, where that support comes from. So on the introduction of the major licence that we have here, which is the boat/fishing licence, in 2010 there was a clear commitment made by the government at the time that 25 per cent of that new licence revenue would be put into a fund called the Recreational Fishing Initiative Fund and spent on projects that were derived through a new initiative that would derive through the rec fishing community. We're now into the fifth round of that and we're seeing things exactly like those development things that I spoke about, artificial reefs, restocking, real tangibles which the community can get their hands on and see where their licence money is going and reap the rewards and the benefits. So that's where that broader level of rec fishing support is coming from.

40 **MR CAMPBELL:** If there's no transparency in the expenditure of the licence money there's not going to be any support.

MS CILENTO: Yes.

45 **MR ROWLAND:** That's a critical key factor and it's something where there's an ongoing challenge to maintain that, from our perspective, so it

needs to be communicated widely and open for everybody to see where the money goes, and that it goes not only just into the Rec Fishing Initiative Fund which was the 25 per cent, but whether it's funding organisations such as Recfishwest or other government expenditure related to rec fishing, it's important that that transparency is there.

MR CAMPBELL: Then the priority of stakeholders needs to be reflected in the expenditure of that money.

MS CILENTO: So it's that licensing here relates to boat-based fishing, is that the bulk of recreational fishing here, and we're talking about marine fishing, so how significant would beach-based, shore-based fishing be?

MR ROWLAND: It's quite significant. So we have a number of licenses, boat is one, we also have them around, I guess, more valuable commodity type fisheries such as Abalone, Rock Lobster, Marin and so on and so forth. But yes, we do have a large demographic of the community who go fishing off the shore-base who don't require a licence, or whether they go scooping for crabs or fishing a line off the beaches and jetties.

MS CILENTO: Would there be merit in extending the licensing regime to include them?

MR ROWLAND: I think it's a conversation that the community is likely to be ready for and one that in Western Australia, now that we've seen some tangible returns which are providing definite benefits and there is that transparency in there, it's potentially a conversation they might be ready for. We might get a situation where we could have a broader, low-cost licence, at the moment a boat licence is \$30 and all of the other fisheries are \$40, and that returns roughly \$7 million into the State government from a revenue perspective. We could have a situation where, particularly for the avid end of our community, they could indeed have a less cost from a licensing perspective if it was maybe a more broad, general fishing licence with perhaps specific fishery endorsements on top of that. I'm not sure what the structure of model might look like but it's a conversation which we believe the community would be ready to have, I'm not pre-empting any outcome there either way.

MS CILENTO: No, that's all right.

MR ROWLAND: But I think given we have demonstrated there is a transparency there and there are those tangible returns starting to come through and we're seeing the benefits then, yes, this would be something we could take to the community and have a chat about.

MS CILENTO: In the context of just a general, flat sort of licensing arrangement what would be a low-cost for you?

5 **MR ROWLAND:** Low-cost for me would be \$20.

10 **MS CILENTO:** For your members. Yes, that's all right. We do get asked from time to time because we try to stress that, for us, it's not really about raising revenue, I can see the benefits that can accrue from that but it really is about establishing a channel to collect information, to be informed and for that two-way information flow, so we do stress the low-cost side of it in the recommendations we make. But people ask us so it's interesting to get your perspective on that.

15 **MR ROWLAND:** Yes, and I think that's a really important point, that frame or the sample of the frame that we can use for surveys, and just having some handle on the level of participation is, I think, even more important than the revenue. You picked it up well in the report, around just the absolute lack of information around catch estimates and that really does significantly impact on the ability to make decisions and the ability to optimise a return of the resource, particularly from a resource sharing perspective when there are conflicts between sectors, and even more broadly around communication and just having an understanding of who's where and what they're doing, that's really important.

25 **MS CILENTO:** That's great, it's been very helpful. Anything else you wanted to add?

30 **MR ROWLAND:** I haven't got anything. Leyland?

35 **MR CAMPBELL:** I think on a licence and the lack of available data, I think it will be handy because it will actually show that participation for the recreational sector is not as strongly linked to catch as it is for other sectors, so participation doesn't mean catch necessarily. There's a lot of fishers that enjoy fishing and don't catch any fish, and the avids who are fishing currently and catching the majority of fish are most likely to already be fishing, so the new participants to the fishery are not necessarily going to be the avids.

40 **MR ROWLAND:** And we did pick that up quite heavily in our submission, that whilst other sectors' effort generally equates quite closely with catch, it's absolutely not the case from a rec fishing perspective. In fact, catching a fish can sometimes get in the way of a good day's fishing for some people, as we found through some of our recent surveys. So where catch is zero, in theory, you could have an infinite amount of effort

with zero impact. That's what it is about for us and, more recently, we're really focused on those fishing experiences as opposed to catch, catch is one part of the experience but it's so much more broader than that.

5 **MR CAMPBELL:** That's understanding those social objectives of each sector, of what they want to achieve and their aspirations, it really comes into play, and recreational fisheries management is about managing people.

10 **MS CILENTO:** That's been very helpful, thank you very much.

MR ROWLAND: No worries. Thank you.

15 **MS CILENTO:** Can I call on the presenters from WAFIC, please. Good morning, gentlemen. I might just get you to introduce yourselves if that's all right, and then you can lead off with a statement or straight into our recommendations and findings as you see fit.

20 **MR HARRISON:** Thank you. My name is John Harrison, I'm the CEO of the WA Fishing Industry Council, commonly known as WAFIC. To my left is Guy Leyland who is our MSC project leader, Marine Stewardship Council Project leader, and long-time WAFIC staff. To my right is Alex Ogg who is our operations manager for WAFIC.

25 **MS CILENTO:** Thank you.

30 **MR HARRISON:** We highlighted in an email last week that we were going to discuss eight points, given the time issues we're going to cut that back to five. Firstly, we want to talk about the issue of compensation in regards to the loss of access to fishing grounds; secondly, the third party certification scheme to be recognised under the EPBC Act; thirdly, you will find in 2.2 regarding allocations would be highly politicised, and we'll cover that in a bit more detail; country of origin labelling; and, finally, I want to talk about the cost shifting and apportioning guidelines, strong guidelines, as to what is recoverable and what is not. I'm going to ask Guy to lead off on the first two.

MS CILENTO: Sure. Thank you.

40 **MR LEYLAND:** Thanks, John. The first point we wanted to make was in regard to the issue of marine planning and specifically the application of compensation in various jurisdictions. There's a lack of consistency by jurisdictions addressing the impacts of marine resilience, given that a number of fisheries operate in both State and Commonwealth waters. We have that situation in Western Australia with the Commonwealth

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bioregional marine planning rolling out, and we have State marine reserves rolling out at the same time. Those orders are usually abutting each other and you have fisheries that operate in both State and Commonwealth waters and are being subject to different planning regimes in regard to the objective of putting in place marine reserves.

It's probably too late in terms of giving some sense in regard to - or consistency or rationality in terms of marine planning for those reserves, but there is the issue in terms of addressing the impacts of marine reserves, and that is compensation. At a State level we have statutory schemes under the Fishing and Related Industries Compensation (Marine Reserves) Act, and that provides the regime to address or pick up the impacts on effective fishers for loss of and the value of their entitlements due to the effects of marine reserves. At a Commonwealth level we don't have any accompanying legislation and we don't have clear policy in terms of how those impacts might be addressed.

So a fisherman who is impacted by both a State reserve and a Commonwealth reserve is facing, certainly in terms of the State reserve, a statutory regime, at a Commonwealth level there is uncertainty, and that fisherman may well be dealing with the impacts at the same time in terms of his fishing operation. It just seems a real failure in public policy, or it is a failure in public policy in terms of addressing those impacts in a sensible, rational way.

MS CILENTO: Thank you.

MR LEYLAND: The second matter I just wanted to talk to was in regard to third party certification schemes. I note, effectively, the draft report dismisses the role of third party schemes as having any value in setting transparent, credible and global best practice fisheries management standards, to meet a variety of market, financial and community expectations and I found that - we found that quite disappointing. The Commission seems to have dealt with that in a very dismissive way. It makes references to the issue being a divisive issue, which is already interesting, however it doesn't really pay recognition to the fact of the leadership role that the Western Australian government and the Western Australian industry has played in terms of going down the route of Marine Stewardship Council certification of the State's fisheries.

In terms of that initiative, it wasn't done because we wanted to feel good in terms of fisheries, it was done for a number of specific purposes. One being the fact that all the polling that's been done in terms of how fisheries are regarded by the community, it's not well-regarded, so governments, in terms of their role of regulating fisheries and providing a

stewardship role in terms of commercial fisheries, it's not resonating with the community. Indeed, repeat surveys by the Fisheries Research Development Corporation has showed that there has been little traction in terms of the community recognising that our fisheries are well-managed.

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Secondly, we have the role of markets, both domestically and internationally, requiring some independent validation of the integrity of fishery management schemes, there's that requirement. Also, we have the issue of the marine reserves and the advocates of marine reserves in terms of putting forward the proposition that, without big, no-take signs, then the marine environment is at risk.

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Government isn't readdressing any of those issues in a way that provides comfort for the fishing industry or, indeed, responds to community concerns. As a result of our consideration in terms of those sort of policy drivers with the Western Australian government, we managed to come up with an initiative in terms of putting all our fisheries through third party certification and we chose the Marine Stewardship Council, after a comprehensive due diligence process.

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I might add that the Productivity Commission talks about a multitude of third party schemes and, to quote, "It is not practical nor desirable for governments to vet or approve schemes as to the consistency with domestic legislative requirements that belies experience in WA where" - anyway - "that belies experience in WA". Well, we did go down a due diligence process in terms of evaluating and selecting a third-party scheme with credibility. I might add, in terms of those third party schemes the standard that underpins that scheme is set by the FAO, through its guidelines on the eco-labelling of wild captured fisheries, and those guidelines have been signed off by the Council of Fisheries Ministers, of which Australia is a member.

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MS CILENTO: Can I just - did you have anything else to add on there?

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MR LEYLAND: I must say, the impression we got in terms of reading that report was that the Commission was quite critical of the Western Australian government and industry approach, which we found quite disappointing, comments such as, "Third party certification was seen as eroding confidence in regulatory standards by implying that the existing standards are not sufficient". That's not the purpose at all. What the purpose is, in terms of our fisheries, is adopting a higher fisheries standard, a global best practice in order to respond to the sort of community expectations and the forces that are operating in society in terms of our fisheries and particular access to fisheries and also access to markets. I'm not quite sure why the Commission took such a negative

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view in terms of those schemes, but I'd be very interested to hear from Commission in terms of its rationale.

5 **MS CILENTO:** Well, number one, we consult widely and we do, deliberately, represent a range of views from different people and then we represent the views that are put to us, number one. So comments about concerns about it eroding existing regulatory regimes are views that were put to us, you may disagree with them but, nonetheless, they were put to us. We acknowledge that some of the accreditation schemes do involve a high standard, the question that we had was whether that's necessary for all fisheries to assume that by implication.

15 I don't think we intended to be critical of what was being done here in WA, it's a scheme that was agreed in consultation with the government and with industry, that's quite fine. We had a number of people across different jurisdictions who referenced the cost of these arrangements, which they felt were onerous, particularly if there wasn't going to be a government financial contribution, which I think is a valid observation to make. The point that we were making about accreditation under the EPBC and the point that we're making about governments vetting different organisations, is the ongoing nature of this, as outsourcing the determination of what the appropriate regulatory standard should be for Australia, taking into account a whole range of considerations.

25 So I don't think we dispute at all the impact on social licence to operate, that there is benefit perceived by some to be involved with these accreditation schemes. The issue for us is whether we feel that there is a strong case to be made for, in a sense, outsourcing that, the sustainability in environmental regulatory standards, to a third party, which does have a different range of objectives to that which many government in different jurisdictions would have. So that was the point we were trying to make. As I said, there are different views here, the purpose of this report is to reflect the reviews and the inputs that we've received across different jurisdictions and from different participants, and I think that's what we did.

35 **MR HARRISON:** That's understood, and just to offer a comment along those lines. Not every fishery will and would benefit from a third party certification, we're aware of that, we're following that here in WA as well. What we are looking for though is to minimise the cost, and if you have to jump through the hoops to a the third party certification and then jump through another set of hoops to get EPBC approval to export your product, you're effectively jumping through two sets of hoops, when in fact you may only - should have to jump through one. Because eventually, the costs associated with EPBC assessment is going to be

borne partly, if not all, by the industry or the fishery that's wanting to get that. So if they've proven that they're sustainable through a third party process that has got merit, then why have to go through another cost factor associated with getting a government regime approved. That's one of the key points I think that we shouldn't miss.

MS CILENTO: Sure, and I'm happy to go back and have a look at that. It's certainly one of the things that we've reflected on, is whether or not those processes can be made to work better together. But I think our view is that it is right and appropriate that there be EPBC standards that are assessed relative to those standards, and not determined on the basis of a third party saying that they've been achieved.

MR LEYLAND: The problem is that the EPBC standard isn't, it would seem, accepted by the Australian community as being adequate, in terms of the polling we've done in regard to community attitudes.

MS CILENTO: As I've said, I mean - - -

MR LEYLAND: So I'm not sure how. It's all very well if you're enabled in terms of saying more regulatory stuff, we'll do that, but the reality is that the community isn't saying that and they're demanding - not only the community but the markets are also demanding something else. So how do we address that in terms of in a sensible way?

MS CILENTO: Well, again, we have received different views as well as to what community expectations and demands are and who is driving those demands. I'm happy to take on board the fact that governments need to do a better job of highlighting their efforts in terms of achieving sustainability and the results that are being achieved there, which, if you go elsewhere in our report, we conclude that the evidence is that the vast majority of fisheries are being managed in a sustainable way.

MR LEYLAND: Well, we agree with you.

MR HARRISON: Yes.

MR LEYLAND: But the problem is the community doesn't.

MS CILENTO: Well, I guess there's a debate then about putting on additional costs in order to do that and who should bear those costs and how that's met and whose responsibility that is for that. As I said, we don't dispute at all that there's a social licence benefit, nor do we dispute that it's in the interests of some to ensure that they're maintaining that social licence to operate.

5 **MR HARRISON:** What we're saying is this. Is there a capacity for some sort of equivalence associated with third party certification meeting the requirements of the EPBC processes. That's what we don't want to lose, that option, if it's there.

10 **MS CILENTO:** Well, I think if there's additional insights that you can provide and ways in which those two processes can be streamlined and made to work together then we'd be interested in that.

10 **MR LEYLAND:** Well, the people who were around at the time when the EPBC Act was being drafted are (indistinct), it was very much based on the Marine Stewardship Council standard which preceded the EPBC.

15 **MR OGG:** I think that's what we're saying, in the case that there is a standard that meets or exceeds the EPBC requirements that, in isolation, be looked at as an equivalent, just to avoid duplicating the cost and procedures of going through duplicate processes.

20 **MS CILENTO:** I understand your point.

MR HARRISON: Thank you.

25 **MR LEYLAND:** The other point I'd make in terms of third party certification in the position the Western Australian government arrived at and it would be useful if we examined the merits of that approach, and that is for the government to provide (indistinct) funding to facilitate industry to move into global best practice for those who wish to do so, given all that benefits the industry, the government as steward of the
30 resource and community confidence.

MS CILENTO: Well, I'm happy to have a look at that section again in light of your comments.

35 **MR LEYLAND:** Certainly, the Western Australian government arrived at that view so we'd be very pleased if the Commission could examine that case as well.

40 **MR HARRISON:** Thank you. We'll move on to the third point we wanted to briefly discuss and that was your draft finding 2.2 which is a move to intersect all trading of access rights. We understand the nature of what you're saying there, but just a word of, I guess, of caution. Is that without the robust framework for integrated fisheries management processes this could become highly politicised. Because we perhaps
45 would ask the Commission to dig a little deeper on that issue to make sure

that there's the support framework to allow that to proceed in a precautionary manner, but noting that political decisions are still with us today regarding access to fishing resources and will continue unless we have something that can actually steer it away from that negativity towards something that is actually meaningful for all sectors that have rights.

MS CILENTO: I think to be fair to us, the finding does say "worth considering in the longer-term for suitable high value fisheries".

MR HARRISON: Correct.

MS CILENTO: So I don't think we're in any way pointing to this happening immediately or across the board.

MR HARRISON: No, we respect that and understand that, but also, at the same time, want to make sure that it is supported by a framework that allows it to be done in a manner that is not politicised.

MS CILENTO: Sure. I mean, again, I might draw your attention to page 75 where I think we're reasonably careful in what we think might happen and the timeframes in which that might happen, also noting specifically that the sorts of things that we would see as prerequisites have not been met anywhere else in the world at this point. So I think it was pointing to the fact that there is a direction with many things that need to be happening before that would ever be realised.

MR HARRISON: Thank you. The next item is country of origin labelling, it's something that the industry has been pursuing for some time. The draft report seems to dismiss this out-of-hand which was disappointing for us. It's been, we believe, a success in the Northern Territory, there's been two Federal parliamentary recommendations that it be adopted, New South Wales has committed to it.

We'd like the Commission to perhaps reconsider in the light of the fact that the consumer should have that choice at the food service level, or the sector for immediate consumption. The benefits that can flow from that to the producer, that is the commercial seafood producer, are quite strong in that they will allow some identification of provenance, et cetera. Now, the argument will be mounted that, yes, that can be done already if you want to get restaurateurs or others to do labelling, but the fact is that, presently, the customer has to basically ask a series of questions to try to identify where their seafood might be coming from.

So that's something that we consider is worthy of further thought for the Commission, and I'll get Alex to talk about a document that's been developed by the Northern Territory and we'd like to table and leave that with you as well.

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MS CILENTO: Sure. Absolutely. The question I have on this really goes to why we're not seeing more of it on a voluntary basis, and whether there are barriers to the industry working more closely with the food services sector to see this realised in a voluntary way and, again, why that isn't already happening, if the benefits to the producer are so clear and the costs to the food services sector are so little and the demand from consumers so significant.

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MR HARRISON: Yes, there is some work that can be done in that space, there's no doubt. But the exemptions that allowed that to come in in the first place was, from my understanding, last minute lobbying efforts to exclude the food sector level from the FSANZ processes. Having said that, we could and we should be working closer, that's agreed, and there are some restaurants that are already doing that, it's a matter of whether you've got the resources to be able to go through that process to the level that is needed.

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MS CILENTO: Well, I guess that's the question that it comes down to for me, is that we've heard from a number of participants that there are these quite significant benefits to be realised by producers, so presumably a view that doing so would significantly increase the demand for locally caught product and that consumers are not aware of where their seafood is coming from now, and if they were, that they would make different choices. So I guess we've been asking people for evidence around that, including any evidence that may relate to sales through retail outlets where there has been demonstration of a shift in demand. Again, if the benefits are so substantial, I do struggle a bit with why industry isn't prepared to engage more to realise those benefits themselves.

25

MR OGG: I think you might find that in certain cases the benefits to the producers and to the consumers differ from the perceived benefits or cost imposed on the hospitality and food service sector, this is where you find most of the conflict. There is, as John mentioned, there is a publication that's only recently been produced and I'm happy to leave you with a hard copy and/or send you a link to this publication.

30

MS CILENTO: That will be great.

35

MR OGG: It's not a peer reviewed scientific journal, it's more of a myth-busting document that is very well-referenced for some current facts

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45

and figures to answer a lot of those questions about what the perceived benefits are, and the reality of what we're finding in that conflict sometimes between the producers and the hospitality sector.

5 **MS CILENTO:** I mean, you know, I'm not trying to be difficult on this one but you appreciate that our remit if you like is to only impose a regulatory requirement if a demonstrated benefit exists. So if we were to advocate for this I can guarantee that those in the food services sector would be expressly asking us for a demonstration of benefit to your sector and to consumers. So I do think it's a reasonable sort of benchmark if you like, for us to be able to support this, is to be able to present substantial evidence as to the net benefits of doing so.

15 **MR HARRISON:** Good. Thank you.

MR OGG: I think a lot of what you're looking for might be in this publication. So we'll leave that when we finish.

20 **MS CILENTO:** Thank you.

MR HARRISON: The final point was regarding recommendation 10.5 which talks about cost shifting. We'd just like to make a point in relation to cost recovery by governments, and we've got an example that's live as we speak and that's to do with the Australian Maritime Safety Authority processes in relation to cost recovery for their consultation. We've been through an exercise and put a submission to the AMSA regarding the fact that some of the costs they are saying are recoverable are indeed not recoverable under their own Commonwealth government guidelines. So whilst you talk about cost shifting exercises and there needs to be clear rules about which services are cost recovered, there also needs to be very clear rules about which services are not cost recoverable.

MS CILENTO: Sure, okay.

35 **MR HARRISON:** So that there's no doubt in anybody's mind that the government can and should charge for certain services they provide, but in other cases those services they do provide are indeed a benefit for the broader community and should be met and borne by the government, not by the user of the particular service. I'm happy to furnish you with a copy of our submission to AMSA if that would help explain?

40 **MS CILENTO:** That would be useful. I mean I think the point is pretty clear and I think we're actually on the same page in terms of trying to encourage greater transparency around cost recovery and ensuring that

there is pressure to reduce costs and improve efficiencies wherever possible.

5 **MR HARRISON:** Yes. Well, we're just saying that, yes, we will cost recover, but also these are not cost recoverable.

MS CILENTO: Yes.

10 **MR HARRISON:** That just makes that very, very clear and there's no opportunity for putting some services in that should not necessarily be paid for by industry.

MS CILENTO: Yes, okay, I think that's pretty straightforward.

15 **MR HARRISON:** So we'll send you a copy of our submission to AMSA on that process and that will clarify exactly what we're saying.

MS CILENTO: Thank you.

20 **MR HARRISON:** On that note, Melinda, I don't think we've got any further add unless you have some questions of us.

25 **MS CILENTO:** No, no, that's fine. I appreciate that you've put a submission in as well and I look forward to receiving that submission and also the documentation around country of origin labelling.

MR HARRISON: Will do.

30 **MS CILENTO:** Thank you very much.

MR HARRISON: Thank you.

35 **MS CILENTO:** I'll give it a break from now until 11.30. Thank you. We might recommence at 11.15 if that's all right for everyone. Thank you.

ADJOURNED [10.59 am]

40 **RESUMED** [11.18 am]

45 **MS CILENTO:** I'll just ask you to introduce yourself and then fire away, if that's all right?

MR GILL: Steven Gill. I'm the General Manager of Maxima Opportunity and the project manager on the Aarli Mayi aquaculture project, and first I'd like to apologise for John Hutton who couldn't make it this morning, was otherwise engaged and couldn't get here this morning, as much as he would like to.

I suppose I'm here just to provide an update on the Aarli Mayi. It was featured in a breakout box in the report, and that report, I suppose, was - and when we first spoke it was in the early days, when Aarli Mayi was applying for 13,000 tonne in the Kimberley Aquaculture Development Zone.

That process, as it progressed, the Aarli Mayi aquaculture project was ultimately allocated through the statement of decision 5,000 tonnes production per annum and a lease area of 369 hectares. So down from what we were initially hoping, and it was challenging, given that Aarli Mayi is a start-up business with the traditional owners, didn't have any production history, and I suppose the allocation process was - gave preference to someone that had an existing business and the existing structures.

So ultimately we ended up with 5,000 in the Kimberley Aquaculture Development Zone, but it made it clear to government that our intention is still to move forward with 15,000 tonne is our ultimate goal of production, and whether that's another aquaculture development zone or some other areas in the Kimberley that we can set up, but I suppose the first thing is to get some production underway, get some track record, and start production before we start looking at expanding the area.

A little bit of background about Aarli Mayi, so it is four shareholders. Three of those are the traditional owners of the region, so the Dambimngari Aboriginal Corporation have the area to the north of the zone. The Mayala people are the water people. They have the water allocation which the zone is actually in. And then the Bardi Jawi people are on the Dampier Peninsula.

So those three stakeholders, along with Maxima Opportunity, which is a privately owned family business that have a history of operating in the area, they've come together to form Aarli Mayi Aquaculture Company Pty Ltd and is now a licence holder in that zone, or will be shortly.

That's pretty much all I really had to say, except that I noted in the Productivity Commission review a statement about participation of Indigenous Australians in aquaculture has not been successful in the past,

- due mainly to inadequate planning and support and training processes. And we probably agree with that assessment, and that is driving our next steps for the Aarli Mayi aquaculture project. We're working with Price Waterhouse Coopers to develop a bankable feasibility study, is our next
- 5 step. We've got a scope of works and are looking for funding from that or for that project, and we've had some positive discussions with the Indigenous Advancement Strategy funding out of Canberra. So hopefully they will see benefit in funding that next step of the bankable feasibility study.
- 10 We identify that we need to work on corporate governance and improving corporate governance within the business and also training and a whole host of stuff that that bankable feasibility study will cover.
- 15 I think I also agree with the Productivity Commission in terms of infrastructure, is a big challenge for - particularly in the Kimberley. It is very remote, and moving - if the zone gets to producing 20,000 tonnes, which is its production capacity, there will need to be investment in infrastructure in that region. So that equates to about 30,000 tonne of fish
- 20 food going out to the zone and obviously 20,000 tonne of fish coming out.
- The current infrastructure, say Derby Wharf where you've got maybe three hours' access day, is not going to meet that demand. So there is a need for infrastructure, certainly a need for workforce development, and I
- 25 think across Australia there's not enough skilled people in the aquaculture industry, and we need to look at how we actually meet that demand. If the zone is producing 20,000 tonne of fish we're going to need some expertise and some training programs to be able to deliver that.
- 30 I very strongly support the WAFIC position of country of origin labelling, and I think the Aarli Mayi aquaculture project would be one of the beneficiaries of that, and particularly if our main species is Barramundi, it is one of those species that I think the majority of consumers, when they see the name Barramundi, expect that it's produced in Australia, and that's
- 35 not necessarily the case, and they need to be educated about that, but country of origin labelling would certainly benefit that.
- The last point I wanted to make, and I'm probably not the best person to speak on behalf of the traditional owners, obviously, but we do a lot of
- 40 work with them and work very closely. Spending time in the Kimberley, it becomes very apparent that the traditional owners do have an interest in fisheries and want to be involved in the consultation and the decision-making process around fisheries, but currently don't know where to start. They don't have the support, the corporate governance structures, the
- 45 knowledge of how to actively engage, and I think some of the departments

as well don't know how to adequately engage with the traditional owners, and that has led to the formation of a working group up in the Kimberley of traditional owners who want to be actively engaged and involved in fisheries decision-making, and I've given Chris the number of a lady who is very articulate, very skilled, very knowledgeable about fisheries and is driving this working group to get involved and look at either a state body or a national body that can assist traditional owners to get involved in fisheries consultation, and they would be an ideal group to give some evidence on the questions you ask about the Indigenous engagement in customary fishing and Indigenous involvement in commercial fishing. So
- - -

MS CILENTO: That's very helpful, and I think particularly in identifying - if it assists us in identifying where some of the barriers to that engagement exist, that would be useful, because one of the things that's clearly identified in the report is not dissimilar to recreational fishing in many places, that - just the lack of understanding about what's actually going on and how you can incorporate that knowledge into better decision-making, but I think even more importantly, specific to Indigenous fishers, is their sort of - the knowledge of the resource itself and thousands of years of custodianship in how that can be better incorporated into fisheries management.

MR GILL: Yes. Well, my involvement in it has been quite a close involvement over the last couple of years. There certainly is that level of knowledge. There's the interest. But they just, at the moment, don't have somebody that they can approach.

So in Western Australian, the integrated fisheries management process identifies three stakeholders: commercial, recreational and customary. The commercial and recreational groups are well-represented, well-resourced in terms of their peak body status, and the traditional owners are looking at that as a potential model for how they may move forward in becoming involved in the decision-making process.

MS CILENTO: Just going back to your own project, I think one of the things which we sought to do in addressing aquaculture in the draft report was, I think, hopefully to try to identify the broader challenges that face this sector. So our remit was specifically in regards to regulation, but one of the things that became clear through our own consultations and engagement was that there are a number of really important requirements all the way through that are important challenges to establishing viable aquaculture industry within Australia.

And you've - I think your project highlights a number of those pretty

clearly, including, you know, the challenge in many locations is access to an appropriate marine environment, particularly where - in more populated areas where, you know, uncontested access is going to be a challenge.

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Here you've got the space.

MR GILL: And a lack of population centres.

10 **MS CILENTO:** Lack of contest. But with that comes a whole range of other challenges, including distance to market, the infrastructure requirements, and I think a more acute need for skills and experience given the sparse population as well. So just one of the reasons why we thought it was a useful example.

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MR GILL: And it addresses two issues. There is a lack of employment opportunities on country.

MS CILENTO: Yes.

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MR GILL: And that leads to a whole host of social issues in a lot of those communities. And there is a high level of excitement about the opportunities that this may bring, the ability to work on country and, you know, undertake training to understand how to grow fish in the modern era, the way we do it, added to their traditional knowledge of country.

25

MS CILENTO: Yes.

30 **MR GILL:** So it's really exciting, and a lot of people are very excited about the opportunities that will come. We just have to make sure that we don't fall into that unsuccessful category, and actually plan really well, and if there was an opportunity I'd really appreciate some support for the Indigenous Advancement Strategy to fund the bankable feasibility study that we're undertaking so that we do plan well, we do understand all the capital requirements, the training requirements, the corporate governance requirements, all of those things, to make this a success.

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MS CILENTO: Okay. I look forward to seeing how you progress.

40

MR GILL: Indeed.

MS CILENTO: Thank you so much for your time.

MR GILL: Thank you.

45

ADJOURNED

[11.32 am]

5 **RESUMED**

[11.54 am]

MS CILENTO: I welcome you, Matthew.

10 **MR WATSON:** Thank you.

MS CILENTO: Do you want to introduce yourself? And then we're over to you in terms of any sort of general comments you want to make or observations on any of the recommendations or findings in the draft report?

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MR WATSON: No problem, yes. So Matt Watson. I'm the Australian and South East Asian fisheries manager for the MSC - that's the Marine Stewardship Council. We have a vision and mission to see stable seafood, healthy oceans, and we use our market-based program to drive change, and it comes in various formats. We've done a lot of work in Western Australia and ACOSS with Australian fisheries as a whole, and I think the Productivity Commission's a really good opportunity to kind of take note of what MSC has achieved in Australia, but also look at our future direction.

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So we've put in a submission to the Productivity Commission at this draft report stage, and we endorse the recommendations, by and large, and yes, it's a good opportunity now to have a discussion with you around the concept of the report, I guess.

30 **MS CILENTO:** Sure.

MR WATSON: Yes.

35 **MS CILENTO:** Great.

MR WATSON: So I don't know where Anne's gone, but we work in Australia really to incentivise and recognition sustainable performance of fisheries. There is that market link, but by and large we look at the way MSC can alter performance on the water. We look at that through MSC's fisheries standards, so we talk about an audit of a management performance against our principles and criteria, and we determine that into three core principles.

45

5 So the first one, as I'm sure you're aware, is that kind of how healthy is that stock, the target stock, and what's done to really protect that fishery in terms of the management performance. The second one's the more holistic look at the environment, looking at by-catch levels, habitat interactions, ecosystem impacts and so on.

10 So we look at the wider performance of the fishery against the ecosystem, and thirdly is the longer vision of the management performance that backs up the fishery, how good is the performance of that management regime, what's the compliance rate with any enforcement, and we also look at long-term strategic research and our management priorities.

15 So those are the three core principles, and behind that lies our certification requirements, which go into some detail.

MS CILENTO: Yes.

20 **MR WATSON:** And in Western Australia, Department of Fisheries have looked at MSC after a due diligence process and really come out saying that what MSC offers the Department of Fisheries and the state government over here really aligns to their willingness to change public perception of how fisheries are managed in the state.

25 So that's a lot of the discussion we've been having. And I was looking at where I spend my time working in Western Australia, and a lot of the time spent engaging with industry, but also I spend a lot of time working with Department of Fisheries and WAFIC to work out what they want from the MSC.

30 And some of that's around perception shifts with markets. Others is social licence to operate. Others is that management regime shift. And for other guys looking to export into MSC-sensitive markets, it's all about the market access.

35 So there's a lot of discussions going on on many platforms at different levels. But yes, MSC is really part of the furniture in WA, with the Rock Lobster guys being the first in the world to get MSC back in 2000, and they have maintained that certification for the 16 years since then, and over the years things have changed, but really MSC has really
40 underpinned any changes and just given confidence to the management system and the fishers on the water that their fishery is sustainable for the indefinite future.

45 **MS CILENTO:** Can I - just in terms of those, I mean, you sort of flagged, I think, you know, four priorities, which is sort of perception

shifts in markets, social licence, exporting into sensitive markets, and then the management regime.

MR WATSON: Yes.

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MS CILENTO: I mean, I think one of the things that we sort of identified in the report, which not everyone would necessarily agree with, was just that a lot of the benefits that flow from MSC certification actually relate to access to markets, marketability, a perception around a product premium. And so as we would see that, they're largely private benefits.

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MR WATSON: Yes.

MS CILENTO: Is that how you see that?

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MR WATSON: No, and that's - our submission interpreted that differently.

MS CILENTO: Yes.

20

MR WATSON: There's 300 fisheries around the world which engage with MSC, and there's pretty much 300 individual reasons for their reasons for engagement. Some reasons are political, that they want to show that their fishery is sustainable and get more out of the political system to support that. Others will see a market premium that they have driven. MSC doesn't go in talking to fishermen saying, "We guarantee market premium."

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MS CILENTO: No, no, absolutely.

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MR WATSON: But certainly I don't think it's - it's definitely not a private incentive. It's certainly down to the fishers to determine their own benefits. At the end of the day, we're not their marketing body, we're just a value-added process which shows credibility - or shows their stakeholders credibility, and they can use that as they see fit, essentially.

35

So it's very difficult to say what's determined benefits. The Rock Lobster guys had a cost benefit analysis which came out with all these subtle nuanced benefits including financial benefits, with the banks being more prepared to lend to a fishery that has third-party certification.

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MS CILENTO: Sure. So let me ask it a different way then. Are there clear community benefits that you identify?

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MR WATSON: I think so. I think with the Peel Harvey fishery, for

example, that fishery is so visual, it's so immediate, it's on this community's doorstep, social licence to operate, and the community benefits are there. They're definitely being teased out as we speak. That fishery's in the early stages of their MSC journey, but yes, there is - - -

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MS CILENTO: So what sort of early stage community benefits would you identify?

10 **MR WATSON:** Well, the fact that they're getting - they're a small fishery. They're 140 tonnes by their landing weight, but they're very valuable to the community, and the fact they cannot overstate their position with regard to the media interest that fishery picks up is just kind of in part credited to the MSC process they've been a part of, and we're seeing that with the Leyton Kurrong fishery down in the south as well, 15 and there's other examples as well where, let's say - let's think. Come back to me on that. But there's definitely documented benefits in terms of what MSC can offer a fishery.

20 **MS CILENTO:** Okay. Just - you mentioned that some - around the world, some fisheries will use MSC certification for political objectives. Is that - would you expect that in environments that are well regulated already, or are they in jurisdictions where there may be questions about the underlying quality and extent of government regulatory frameworks?

25 **MR WATSON:** Yes, I see it in both. MSC is present in developing world countries and developed countries. And an example I'm thinking of is in Mexico, where they wanted an improved management structure, and they used MSC to kind of leverage that position, and because of the market shift after they got MSC it led to the secondary benefits through 30 the government commitment, including better infrastructure, ice facilities, and those kind of benefits that came about because the markets were then interested in the products.

35 But also in developing world fisheries where industry wanted their management to just step it up a little bit, to see things from their angle. They used MSC to get the management regimes and their politicians committing to sustainability through third party certification. So it has happened in both developing world and developed world countries, and again it's down to the individual needs of that fishery.

40

MS CILENTO: Okay, thank you. Sorry to interrupt.

45 **MR WATSON:** That's okay. In the report we looked at the potential for third party certification to be subject to market bias, and I was going to say that our credibility and transparency just can't really offer that, so we

have three tiers of governance which really direct the best practice way for our standard takes, and we've also got the chain of custody standard, which is determined by those government structures, and really that's - it's a balance on those governance boards about different interests.

5

So we've got the market interest there, but we've also got academic, government and industry interests which are represented in our boards, and what that really shows is that not one single party can show influence over the direction the MSC takes.

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And we've just been through this with our fishery standard review, which looks at the performance of our requirements against best practice, and those governance boards, and a wider stakeholder community, have the opportunity to input into that direction, and what came out was something that was agreed by all parties, and it wasn't driven by one single interest.

15

There were interested views proposed, but the outcome was something that everyone agreed with, and certainly was transparent and credible against ISO requirements and the UN's FAO good practice guidelines for third party certification.

20

So whereas - I think your report, it picks up that third party certification might be subject to market bias, we at the MSC don't see it that way.

25

MS CILENTO: In respect of the MSC?

MR WATSON: Yes. Certainly I can't speak for other standards.

MS CILENTO: Yes.

30

MR WATSON: Yes. And I think - and part of that is the stakeholder council, of which WAFIC is a member, and Department of Fisheries sits in as an observer, and they meet at least yearly with further kind of telephone conference to discuss key interest in parts of the MSC process, and that includes future direction, what we should engage with and what we should leave alone.

35

And that changes regularly in terms of - it goes with our best practice wavelength, but it's never signed off by one party. It's a unanimous agreement by all our stakeholder representatives.

40

MS CILENTO: Okay.

MR WATSON: Yes.

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MS CILENTO: Did you have any views about ways in which MSC accreditation and other environmental regulations here could be made to work better together?

5 **MR WATSON:** I think what we've seen Western Australia, with a pre-assessment underpinning the direction of WA commitments, was really impressive. It's world-leading. There's others around the world which have MSC commitments to kind of underpin their management strategy, but in Western Australia it's really driven things such as the kind of
10 harvest strategy uptake, where it really drives how they implement harvest strategies for their fisheries. That was fantastic. And it was good to see a recommendation in the draft report saying other states should consider a holistic approach to harvest strategies, because I think MSC can offer a solution there.

15 I think the consultation change which has allowed non-catch stakeholders to better engage with the management system in Western Australia was a good one, and again that's something that could be replicated in other states across Australia.

20 But no management regime is perfect, nor is the MSC, but what it does, it identifies gaps or issues which can be addressed at an efficient scale. So instead of taking these kind of piecemeal chunks of management, when you look at benchmarking your whole management performance across
25 the state, what you can see is your roadmap for the future. You can see what's your immediate priority and you can see what's something that should be addressed within the next five to ten years.

30 And MSC's standard really offers that opportunity, with a pre-assessment at the confidential level, and then a full assessment which is then driven by stakeholder engagement. It allows further stakeholders to engage and have their say on the performance of Australian fisheries.

35 **MS CILENTO:** All right, that's useful. I didn't have any (indistinct) questions.

MR WATSON: No? I'm not checking emails here, I'm just flicking through my submission.

40 **MS CILENTO:** No, no, I totally understand.

MR WATSON: Cool. What else are we talking about?

45 **MS CILENTO:** I'm trying to be a screen person these days too.

MR WATSON: Yes. I've got paper here.

MS CILENTO: It waxes and wanes in its own efficiency.

5 **MR WATSON:** Yes, certainly. Something I flicked through - - -

MS CILENTO: Take your time.

10 **MR WATSON:** We looked at some of the FRDC market research that's
been done on kind of consumer trust, and again, this is where our position
might have differed somewhat from the report in terms of who trusts who
in terms of government legislation, and the FRDC market research says
that it's basically a rule of thirds, where one third do trust governments,
15 one third don't really know what's going on with the governments, and
one third vehemently distrust governments, and that's where third party
certification can just add trust in terms of the government legislation.

20 We think MSC third party certification is a trusted way to work in the
food world, and we're not saying we - you should trust us more than
governments, we just say you should trust your government because of
third party certifiers. So this is a good way to just realign our trust values
and just show that, in Western Australia, the government here is doing a
good job, and how you can see that, because they have third party
certification for these fisheries.

25 So that report is embedded within our submission.

MS CILENTO: Yes.

30 **MR WATSON:** And I think we say that as our take-out message is that
we're not here to do the job of government, but we're here to kind of just
align and show the consumers and the stakeholders that have an interest
that a government regime is doing a good job, and here's why, because
they've been through an independent third party look with regard to the
35 fisheries' performance.

MS CILENTO: Okay.

40 **MR WATSON:** Finally I think the recommendations we saw, especially
on the wild capture level, were fantastic. It was good to see
recommendations to eastern states to essentially up their commitments to
sustainable exploitation.

45 We're not saying MSC is the panacea, but we certainly see that we could
work in eastern states if we were invited to on a similar scale to what

5 happens in Western Australia. There's management efficiencies, and even with that 14.5 million that has been ring-fenced over for the third party certification projects, because of the way the government works, has structured that project, it's been a really economically efficient way of making some of the changes that have been recommended in the draft report.

10 So we've seen, like, the harvest strategy implementation being a really cost-effective to roll out that strategy.

MS CILENTO: Does it - remind me. The 14 million, does that cover the fisheries - that's the pre-assessment stage, isn't it?

15 **MR WATSON:** It's for everything. So that 14.5 million was split into two.

MS CILENTO: Yes.

20 **MR WATSON:** 8 million was for capacity building within Department of Fisheries - - -

MS CILENTO: Yes.

25 **MR WATSON:** - - - for their science, their research, and their policy.

MS CILENTO: Yes.

30 **MR WATSON:** 6.5 million was given to - not given. Is available to industry for the pre-assessment, the full assessment and the first surveillance audit - - -

MS CILENTO: Yes.

35 **MR WATSON:** - - - with the expectation that any fishery that does commit - and that's a voluntary commitment - but does see it through for at least five years before they evaluate the value in the MSC third party certification, of which, because of the way that money's been made available, it's been spent very wisely. It hasn't been spent at the anticipated rate, because there's been such efficiencies made in terms of
40 doing these things all at once with regards to the pre-assessments and some of the assessment work.

45 So there's actually a lot of money which is still available in the pot, which we hope to see rolled over into the next elective four year cycle. As a result, the money should still be available to industry to see through the

MSC commitment in the near future, and I think WAFIC and government want to see, idealistically, in the next 10 or 20 years every fishery in the state have the opportunity to get MSC certification, or ASC for the aquaculture guys, but essentially, yes, that money is still there, and because of those efficiencies hasn't really been spent at the anticipated rate. Which is great, because if any other state government is looking, I'd assume they'd send a delegation to WA to have a look at what's been done over here, and that discussion can be had around how much should these projects cost in terms of what's needed on the water.

MS CILENTO: Okay. Well, thank you for that.

MR WATSON: No, great, thank you.

MS CILENTO: Thanks for your time.

MR WATSON: No, no worries.

MS CILENTO: Is that a presentation?

MR WATSON: It's just a kind of overview of MSC.

MS CILENTO: That's fine. I'm sure we have that already.

MR WATSON: Yes, that's great.

MS CILENTO: All right, great.

MR WATSON: Cool.

MS CILENTO: Thank you.

MR WATSON: No worries.

MS GABRIEL: Sorry, I hope I didn't invite myself over to the table. I thought I'll just keep Matt company but it seems like he didn't need any from me, so that's why - so thank you.

MR WATSON: Yes. Anne's the program director for MSC (indistinct).

MS CILENTO: Yes, thank you.

MS GABRIEL: Thank you very much.

MR WATSON: So have you got a busy day, or - - -

MS CILENTO: Yes, we're sort of - another two presentations, so - - -

MR WATSON: Good.

5 **MS CILENTO:** Yes, cool. Thank you very much.

MR WATSON: No worries, thank you.

10 **MS GABRIEL:** A pleasure.

MS CILENTO: Put my glasses on. Frank? Thanks Frank. Frank, if you wouldn't mind introducing yourself and explaining where you're from or what capacity you arrive before us?

15 **MR PROKOP:** Sure. My name's Frank Prokop. I'm here presenting as an individual, although I am currently a visiting research fellow at Curtin University. I've spent 14 years as executive director of Recfishwest. I was commercial fisheries manager for the Western Rock Lobster Fishery and recreational fisheries in New South Wales and Western Australia. I'm

20 a previous FRDC director. So I've had about 30 years of experience in all of this. I come wearing many hats.

MS CILENTO: Thank you, and I acknowledge that we've got a submission from you as well in response to the draft.

25 **MR PROKOP:** Absolutely. So I'd like briefly to speak a little bit to my submission and - - -

30 **MS CILENTO:** Please.

MR PROKOP: - - - I think - I hope that there'll be some interactive questions, because I challenged a number of the - - -

35 **MS CILENTO:** Sure.

MR PROKOP: - - - suppositions that are in the Productivity Commission report. Yesterday Ann Rushton gave a short 10 second YouTube video claiming how wonderful the time she had at the first ever

40 Gone Fishing Day and welcoming people to participate in the next one.

I think that indicates a lot of the reasons why the recreational sector finds far greater comfort in political processes than it does in existing bureaucratic management processes. So we've got a parliamentary

45 secretary who is happy to publicly espouse the significant benefits of

5 recreational fishing, yet sadly the Productivity report, other than mentioning it's got enormous social benefits, makes no attempts whatsoever to quantify, define or provide a methodology for realistic comparisons upon which resource management decisions could possibly be made in the future.

10 I give you the question that I posed to Senator McDonald - it's in my submission - in 2002, which is, do you know of any industry with so many participants and so much economic activity that gets so little recognition by government than recreational fishing?

15 It is worth in the vicinity of - the most harsh critics, \$1.85 billion, to more than \$10 billion. Probably \$5 billion plus is a reasonable estimate of economic activity.

MS CILENTO: Is that on the basis of expenditure?

20 **MR PROKOP:** Which is recognised by the state governments in each of its annual reports. If the commercial fisheries are worth \$1.73 billion and if you add however many type two multipliers you would care to add, you will at best come up in the vicinity of \$3 billion which means that the recreational sector is worth somewhere between 1.4 and 3 times the commercial value to the community.

25 **MS CILENTO:** So can I interrupt?

MR PROKOP: Yes, of course, please do.

30 **MS CILENTO:** So one of the things - so I think what I would say in response is that number one, I think we pretty clearly and strongly articulated in the report the importance of recreational fishing, the fact that it needs to be taken into consideration, the fact that we need better measurement, and highlight different ways to do that.

35 I think we also highlight that we don't think expenditure methods of assessing the value of recreational fishing produce the right results, and throughout the consultation process we have asked numerous bodies through our engagement and questioning for the ways in which they might suggest we go about this, and other than surveys, which we have
40 advocated, there hasn't been a strong alignment of particular approaches.

So I think we flag a couple, and then we stress the importance of getting better data and working with the rec sector to define appropriate methods to determine benefit and value.
45

5 **MR PROKOP:** You've rightly identified valuation as - absolute valuation as a methodology, but then you've gone straight into Hundloe-esque models of contingency and travel valuation models, which by and large grossly undervalue recreational fisheries.

10 **MS CILENTO:** So I'm happy for you to recommend a preferred approach.

15 **MR PROKOP:** What I'm suggesting is that one of the strong recommendations should be that there is a development of methodologies to determine what that might be. I think we need to get - - -

20 **MS CILENTO:** That's fine. Who should undertake that?

25 **MR PROKOP:** My personal view is that FRDC should coordinate a working group which includes objective and independent expertise. The problem is that there is a whole lot of vested interests in certain positions, including by the recreational sector, to come up with the highest possible valuation.

30 But if I can just return to an absolute comparison?

35 **MS CILENTO:** Sure.

40 **MR PROKOP:** Recreational fishing is worth more than the Australian Football League in terms of its economic activity. It probably has almost as much media coverage as the AFL. It doesn't have a dedicated channel on Fox, but it has many television programs which come forward.

45 It is the largest invisible industry in Australia insofar as it is not considered a significant proportion of tourism, where much of the activity is - comes under tourism. It is not considered a sport. For example, I've got the reports from the government on sport expenditure and others. It doesn't rate, yet the government will tell you that the participation rates vary between about 15 to 18 per cent to a size 23 per cent in various jurisdictions.

The exports of goods does not include fishing tackle, and the import does not include - it includes boat shots and other vessels, but does not include recreational tackle, yet the Australian Fishing Trade Association at its conference in 2009, from memory, suggested that it was going to be worth \$1 billion retail at that point in time.

So somewhere somehow a massive amount of equipment and expenditure is cryptic and not being picked up anywhere within government with

respect to either its impact or its benefits, and I think it's extremely important that we come up with mechanisms by which those types of comparisons should be able to be quantified and to translate into realistic decisions.

5

I think that - and it's an extraordinarily difficult proposition for the Productivity Commission, is that it's quite clear that there's catastrophic market failures in terms of recreational fisheries, in that they will universally use political processes over existing bureaucratic processes to try and determine allocation and management outcomes.

10

I think if you take the simple - ask the question, why has this market failure happened, and what can we do about addressing it, I believe that much of the failure rests with the Commonwealth's steadfast ignoring of the sector in terms of its activities and its - any of its economic benefits.

15

MS CILENTO: So I don't think we would disagree at all in terms of the importance of recreational fishing. I'm happy to have a look at - again at how we've portrayed that in the report, but I actually thought that was quite a strong observation of ours in terms of highlighting the extent to which it had been - there wasn't clarity around the way in which it was accounted for or incorporated into allocation and decision-making in many jurisdictions, and I think we emphasised many of the same points that you've just raised in terms of ensuring that there are appropriate methodologies to consider and value the benefits that are derived through recreational fishing, and indeed, point 2, the vast number of Australians that do actually engage in that.

20

25

In terms of jurisdictions, I mean, my understanding is that recreational fishing is by and large regulated by the states and territories, so I'm wondering if you could just elaborate on your concerns around the lack of interest from the Commonwealth?

30

MR PROKOP: It is at a number of levels. One is that OCS, as you've rightly pointed out, exclusively gives jurisdictional powers to the states for recreational fisheries. That has meant that the Commonwealth has said, "It's not our problem," yet there are significant overarching issues, and you've touched on a number of them in terms of, for example, hypothecation, and I've touched on one which is a comparison between the Wallup-Bro system in the United States, where there is a small hypothecation on the import of fishing tackle which goes into federally administered funds back to the states.

35

40

That had been assessed and determined. It was - it's not supported - strongly opposed by the fishing tackle industry, but for me, the take-home

45

5 message from the report was that the recreational sector isn't paying and should. The box where you talk about the recreational fishing sector taking more than the commercials, therefore they have to be controlled, was, in my view, something that needs to be strongly addressed, because all fish resources are not created equally.

10 So for example - and I use the example in my report. We've had a strong and transparent allocation process which has given 95 per cent of the Western Rock Lobster resource to the commercial fishing industry. That has been accepted. The recreational sector has had 5 per cent. But if you follow the logic that's contained within - or at least inferred in your box, because the recreational sector is catching more Dusky Flathead in New South Wales they therefore have to be - have their catches constrained, is an assumption that needs qualification quite clearly, and Dusky Flathead is a particularly interesting example in New South Wales, having been the manager there, put in place the first ever bag limits in 1991 for them.

20 Flathead are considered a Commonwealth species by family, and there was significant issues with Commonwealth people coming into state waters to catch Dusky Flathead which they were then allocating against the Commonwealth quotas and not against any state management.

25 Dusky Flathead have gone from a food fish in 1990 when I first came into management to the point where there are now maximum size limits and slot limits, and most of the - particularly the large females are being released.

30 The challenge is that - and I touch on it with McLeod's assumption of a null hypothesis with respect to resource reallocation, where he says a commercially caught Herring in Western Australia is worth three to four cents. For reallocation to be possible, you only have to have a value of the recreational sector greater than four cents. It's not an argument that would even be considered.

35 So in the case of Dusky Flathead in New South Wales, I cannot, at a political, practical, economic or biological basis, come up with a reason whereby the recreational catch share shouldn't be greater than the commercial catch share for Dusky Flathead in that jurisdiction.

40 **MS CILENTO:** So I think, and if this doesn't come across I'm happy for us to have a look at how we're presenting this in the chapter, I think the point we were trying to make is - was simply that there is a large - in some fisheries there is a large amount of activity that's poorly understood, and that if you are going to manage for sustainability, that it would be useful to understand what that activity is.

45

MR PROKOP: And as I've said - - -

MS CILENTO: So I don't think we were implying - - -

5

MR PROKOP: - - - your conclusions are quite sound.

MS CILENTO: Yes.

10 **MR PROKOP:** What in my view is lacking are those qualifying
statements that make it clearer that that is the basis by which you are
raising those issues, because with - in the absence of that context it can be
interpreted that because the recreational sector is catching more Dusky
15 Flathead in New South Wales or King George Whiting in South Australia
they must be controlled, constrained, and pay a far greater access to
control for their share of the resource.

MS CILENTO: Okay, so I'm happy to go back and have a look at that. I
don't think it's reasonable to conclude that we said that they should pay a
20 far greater access fee from what we put - outlined in that section of the
report. But I'm happy to go back and have a look at how we presented it.
But certainly the intention was simply to demonstrate that there are
fisheries in which, whilst for most people when they think of fisheries
regulation they think of commercial, and in fact that's been the practice in
25 many jurisdictions, that the focus is very much on commercial activity,
that there does need to be consideration of recreational activity, and we
were just presenting examples of fisheries where there is a significant
recreational take but there is a lack of concrete evidence about how large
that take is and how that take is changing over time.

30

MR PROKOP: I do refute your assertion that the recreational sector has
been largely ignored. Several of the references which I have included
show that recreational management in the period that I was active, from
1990 to '93, had between 200 and 1,600 per cent increases in management
35 compared to commercial fisheries.

So what I've said in my submission is that that does reflect to a large
extent the fact that there had been almost no recreational management up
till that time, but I do believe that it is a generalisation to say the
40 recreational sector hasn't come under management, and indeed in Western
Australia things like possession limits, the Barramundi Accord, the
Toohey process on - with explicit allocations of Rock Lobster, Abalone
and Demersal Scalefish has demonstrated that the recreational sector has
that capacity to come through.

45

5 Your report again talks about the Western Australian model, which I think is very good, where WAFIC and Recfishwest take the strong lead. What it would have benefited from was a recommendation that there needs to be resourcing of particularly the recreational sector at the national level to enter into those debates, for example, with Southern Bluefin Tuna, where at the moment the recreational sector is - has little or no chance of getting a reasonable hearing through existing processes.

10 **MS CILENTO:** Okay.

15 **MR PROKOP:** So you talk about the need for greater cost recovery, and I think that that is very true, that the recreational sector does need to pay. But as I've said in my report on a number of - my submission on a number of occasions, in many cases they are paying a significant amount. For example, Western Australian Recreational Rock Lobster Fishery is one of two, in my opinion, true resource rents that exist at the moment, and I don't know what the figures are as of today, but when I was at Recfishwest a couple of years ago, it was between three and five times the return to government per kilo of fish caught.

20 In addition, they are still tracking at about 60 to 65 per cent of their allocated catch, and it would be nice to have the report more explicit in mechanisms by which that we could have a transparent two-way reassessment of catches and other things going forward.

25 As it exists now, if the recreational sector is under-catching its resource, it receives no benefit, but if it exceeds its catch, it will be subject to further management controls quite quickly. So it could be argued, and it hasn't happened yet, so this is theoretically, that the 339 tonnes which was in 30 2014-15 by the annual report is being reallocated back to the commercial sector at a ratio of 95:5 because that's they're overall explicit allocation.

35 So the - we have a system where when we do have explicit allocations, the recreational sector is not able to enter the market. If it does enter the market, it's highly likely to be rapidly skewed or distorted because it's very thin anyway, and they'll work out that maybe the guys will have to pay extra.

40 And we have significant additional difficulties in that for - and I've stated in my report, for example the recreational sector may wish to trade some of its catches for area access. So we don't have any mechanisms by which more lateral and creative resource sharing arrangements can be entered into if the recreational catch shares are translated into a formal and explicit rate.

45

5 **MS CILENTO:** So is that - I mean, we do - we did touch on this, you know, inter-sector transfer of quota more generally. I have to say it's something that's met with some resistance even here this morning in terms of its ability to be managed and dealt with and the need for underlying robust fisheries management strategies to be in place.

10 Now - so if you're suggesting that in the Rock Lobster Fishery that that's a good example where it could happen, that's an interesting observation. More generally, I have to say, we've had some pushback even on our existing recommendation that was, I thought, fairly modest.

15 **MR PROKOP:** And I have to say that that merely highlights the catastrophic market failure, which is that the people who have a vested interest in continuing with existing systems have no desire to examine change which allows the legitimate recognition of another sector in terms of resource allocation and ongoing management. There is no better example, and I highlighted it here with respect to Southern Bluefin Tuna, where it could be argued that the government has been wilfully negligent in allocating 100 per cent of a common property resource to the commercial fishing sector, and the question that needs to be asked - and ironically you touch on it in your Aboriginal fishing section but not in the recreational sector section, is should the recreational sector be expected to buy back a share of its catch which it should have had in the beginning but which government has wilfully neglectfully overly allocated to one sector and one sector only?

20 In the case of native title, it's been increasingly found that the government is responsible for the consequences of that mis-allocation, and it's something that the recreational sector is looking at in terms of political avenues, because neither AFMA nor DEWR are interested in going back and revisiting history from the context of addressing any mis-allocations or negligent allocations which it may have made in the past.

25 **MS CILENTO:** Yes. But I think some of the other issues that were raised are actually some of the points that you made earlier, which is about ensuring that there are bodies that are capable of representing recreational fishing and the like.

30 **MR PROKOP:** I think that one of the great strengths of Western Australia is that we've developed a largely respectful and cooperative arrangement between commercial fishing, aquaculture, and recreational fisheries.

35 The Indigenous issues continue to be an oversight, and in my personal opinion it's a tragedy that the Aboriginal fishing policy never came to

fruition, because it was a very good policy in my view, and would have addressed many of the contentious inequities that exist with that sector.

5 But in the Commonwealth, we have no such systems. We have very strongly developed relationships between AFMA and the commercial fishing industries, but we have none for the recreational sector, and there is no interest in developing either the expertise within government or outside of government to enable those discussions and debates to be had.

10 You talk in a number of cases about repetitions and differing management regimes across straddling stocks, and I do believe at the national level there is some need for examining that in a more objective manner. I ran many years ago a workshop called Same Fish Different Rules, which examined that explicitly. The absolute irony is that in Western Australia
15 we changed our King George Whiting rules to reflect South Australia simply so that we would have some consistency across the stock for jurisdictions. South Australia changed its rules three months after Western Australia changed its.

20 So there was no reward for cooperation and assistance in that regard. But what we don't have is someone in the helicopter. I've touched on, in terms of economic theory and different marginal valuations, that I do believe that there is a potential opportunity to examine in an economic sense the comparisons of the different management regimes in a marginal
25 economic sense. For example, the difference between size limits of Pink Snapper between the various jurisdictions could be a legitimate form of research. It is currently not considered to be a priority, and one of the major challenges is, and I allude to it in my submissions, is that the assumptions that underpin economic and biological theory are seldom
30 challenged, and they do not hold up very well against a sector like the recreational fishing sector.

As I've said, the biological models, up until recently, assumed constant recruitment, which we now know is specious, and has probably resulted in
35 the crash of a number of stocks because recruitment can vary by orders of magnitude, and economic theory often holds to the thinking man model, but most fishermen behave much more like gamblers than they do the thinking - the logical man. In other words, when things are bad, rather than ceasing to fish, which is what Don Francois used in New South
40 Wales, they fish harder, both commercial and recreational fishers.

And you've got this situation whereby when stocks are no longer commercially viable the recreational sector continues to fish and can mop up. So neither of them individually are responsible for stock declines, but
45 together they are - have significant additional impacts, and there's nobody

looking at the different motivations and trying to determine how we can take a conservative approach towards management.

5 My firm view is that in Western Australia the Western Rock Lobster and Toohey processes and another process which was the Barramundi Accord enable - if the sectors get together as peers to discuss and debate issues of commonality rather than issues of difference.

10 The saddest fact in places like New South Wales are that the commercial fishing industry's reluctance to negotiate on any resource-sharing issues has meant that they have gone to political outcomes, and when the recreational sector has had the political wheels turn in their favour, they no longer cared about the people, they cared about winning.

15 And recreational havens in New South Wales in my haven are a sub-optimal result. With almost any exception a zero-one decision is extraordinarily high risk, and every time you come up with a one on your favour you're closer to getting a zero.

20 And I think that there's - and I don't know whether he's come to see you, but there's a young man named Damian Bell who works in the Peel-Harvey Crab Fishery who's doing an enormous amount of good in terms of negotiating a small, profitable commercial fishery that works in conjunction rather than in opposition to the recreational sector.

25 So the report doesn't differentiate, for example, the vast difference between in-shore and off-shore fish stocks. I talk about, in my report, about the massive difference between prawns and pearls, for example, that have only a tangential impact on recreational fisheries and are rightly
30 managed largely for commercial benefit.

35 But an estuarine gillnet fishery for Mullet in New South Wales is highly interactive, highly controversial, produces an extraordinarily low-value product and one that's equally replaceable with a beach (indistinct) caught Hard Gap Mullet that is infinitely superior both as a product and in terms of its sustainable management, yet it's continued to exist because of a history rather than rational objective consideration.

40 **MS CILENTO:** So just - I mean, I'm interested in what's the process where we get to that rational - in your view, what's the process that gets us to a more rational outcome?

45 **MR PROKOP:** With the exception of Western Australia, the recreational sector are not considered legitimate stakeholders. So the first and most important factor is that they have to be considered to be legitimate

stakeholders.

5 In the case of the eastern states, the adversarial nature of the discussions is going to take extraordinarily strong leadership, and my personal opinion is that if AFMA are interested in dealing with recreational fisheries they need to develop the expertise internally to demonstrate that they can be objective and show true leadership in facilitating outcomes.

10 The tragedy is that they recently reappointed a board with no representation whatsoever from the recreational sector again, so I cannot see how it's possible for them to redress those historical difficulties.

15 **MS CILENTO:** I'm a little bit conscious of time. Do you mind if I ask you specifically about tuna?

MR PROKOP: Yes, yes. Can I just go back to one point - - -

MS CILENTO: Yes, certainly.

20 **MR PROKOP:** - - - and that's my assertion that the - about what I consider to be a fundamental error in the assumption of the 12 per cent expenditure? That what you have taken is the expenditure on commercial fisheries - sorry, the expenditure on all fisheries against the benefits of commercial fisheries, which gives a very misleading over-subsidisation of
25 the commercial fishing industry, to its detriment.

If you were taking the total benefits - total expenditure against total benefits you'd come up with a figure at 6.6 per cent using the Western Australian figures, and if you used just commercial expenditure, and then
30 commercial benefit, it is significantly less.

MS CILENTO: So have you detailed that in your submission?

35 **MR PROKOP:** I have.

MS CILENTO: Okay, that's fine, we'll have a look at that.

40 **MR PROKOP:** So the - again, it's the sort of thing that Treasury picks up and says, "New Zealand is spending 6 per cent and Australia is spending 12 per cent, therefore the commercial fishing industries are getting grossly over-subsidised." I think that's unfair on the commercial fishing industry. New Zealand spends significantly less money on recreational fisheries for a variety of reasons than what we do in Australia.

45 **MS CILENTO:** All right.

MR PROKOP: So yes, happy to talk about tuna.

5 **MS CILENTO:** Well, assuming that that more detailed point's in your submission, so that gives us a change to have a look at that, and of course, if we - if it's not clear to us, we can come back to you.

MR PROKOP: Absolutely.

10 **MS CILENTO:** I'm just interested in how you think the process should go in terms of sort of re-allocation in that particular instance?

15 **MR PROKOP:** Well, as things stand at the moment, it's highly likely that existing stakeholders will advocated for a buy back of their catch shares. I can understand their position. I can state categorically I think that it is incorrect, that it's common property resource that was allocated - to have 100 per cent of that allocation in a multi-sectoral use to one sector is grossly irresponsible.

20 I have touched upon, in a couple of my criticisms of the report not touching on some of the caveats around quota-based management, about the importance of having proportional allocations rather than absolute allocations. It's generally accepted as the way to go.

25 But in the case of Southern Bluefin Tuna you can adjust the proportions to give effect to a resource allocation by reducing the total proportion of allocations and the conversion into an amount that is less than 100 per cent, so you can do it without having to go to the market. The challenge is at what point in time do you base the allocation decision?

30 And we struggled in Western Australia with respect to Western Rock Lobster, and even more so Finfish, because what you often have got historically is a race to fish when people - when commercial fishermen learn that there's a desire to implement management. So they rush to try and get as much catch history as they can so they'll benefit out of the allocations, and therefore you're making an allocation on the basis of a potentially over-exploited stock.

35 In the case of SBT, the recreational catch - recognised recreational catch has been nothing. It is a particularly challenging fishery, because the recreational sector are targeting - - -

40 **MS CILENTO:** Sorry, the recognised recreational catch has been nothing?

45

MR PROKOP: In - the Commonwealth has allocated 100 per cent of its catch share to the commercial sector.

MS CILENTO: Sorry, I understand now. Yes. Yes, yes.

MR PROKOP: So the recreational sector are catching fish that - - -

MS CILENTO: Sorry, I misunderstood what you were saying, that's fine.

MR PROKOP: Mind you, I would urge you to have a look at the Coolangatta Communique discussion on this matter, because they talked about this in 2002, and the Commonwealth did nothing about addressing any of the issues that could have led to a resolution prior to 2016, before the SBT catches by the recreational sector, particularly in Victoria, Tasmania and southern New South Wales came to a relatively significant level.

MS CILENTO: So your view is that the Communique remains relevant and valid today?

MR PROKOP: I think the Communique represents an extraordinarily important baseline for discussion. A number of the challenging questions about recreational catch shares, allocations and property rights were discussed at that time, including some of the cost recovery elements that you've touched on in the Productivity Commission.

The fact that it had been studiously ignored has led to a gross lack of trust by the recreational sector and the objectivity of the Commonwealth to actually address the issues, and in fact you touch briefly on the Marlin issue in your Productivity Commission report. Tragically, I can assure you that the Commonwealth were neither magnanimous, generous, nor objective in the ultimate management, having threatened me with a constitutional writ at the time I was working for the WA Government over Marlin management.

So it was ultimately resolved that states concluded that there was a far better community return on Black and Blue Marlin to the recreational sector than to the commercial sector, and it was ultimately resolved in the favour of the commercial fishermen, the Strait Marlin, which is the one that does have some commercial value.

As I've alluded to, the Productivity Commission in my opinion should touch upon the fact that AFMA were able to access \$220 million for an adjustment for management that, in my personal opinion, to which I am

entitled, gave an over-allocation of latent fishing effort and had a significant negative impact on Western Australia, because they allowed tuna authorisations to be recognised around Australia, which meant that the Western Australian licences that were worth almost nothing suddenly
5 had enormous value, which was then paid for by the taxpayers. They didn't address any of the resource-sharing issues as a result of that.

Coming back to you've raised the issue of tags, my personal opinion is that of all the fisheries in Australia, and I think that the Shark Bay Snapper tagging program in Western Australia was a failure, that's the one that
10 lends itself very well. The challenge and the difficulty is - - -

MS CILENTO: Sorry, just - on what basis?

MR PROKOP: On the basis that it was overly expensive and the science upon which the original discussions were based was largely inaccurate, and the cost - the cost was very, very high.
15

MS CILENTO: Okay.
20

MR PROKOP: But it was an interesting model and it worked at one level, in that it achieved pretty much what it said. But when the conservation movement were buying tags they were wearing around their necks to keep people from catching them, it wasn't necessarily achieving
25 an outcome. And the stocks recovered quite well, and it's important to remember that in most cases in Australia, including a number of the Commonwealth fisheries where they have been highly criticised, stock recoveries have been pretty extraordinary, and far greater than what the biology had said.

30 So the problem with SBT in a recreational sense is that if three guys go out on a boat out of Victoria and you have one tag and one guy catches one and you get into a school, how do you deal with the second guy that wants to catch a tuna? What do you do when the tuna are in the order of
35 80 to 120 kilos, which is far more than most recreational fishers could want, so if you have a bag limit of one per person that represents a significant quantity of fish coming back in. And how do you regulate what people do after they catch their first fish if they've got a tag?

40 So one of the things that in my opinion FRDC should be investing much more in is angler responses and behavioural responses as management controls approach. It's a tragedy that in Western Australia we have enormously high-quality research on the Sampson Fishery off Perth. It's worth probably more than all the in-shore commercial fisheries combined,
45 yet it has attracted zero interest in overt management because the tradition

is that we don't manage recreational fisheries.

MS CILENTO: Okay. Anything else you wanted to add?

5 **MR PROKOP:** Again, my conclusion is that conclusions of the report
and the recommendations are sound. I would like to see far more on the
methodology of realistic social and economic considerations. I think it
would be very nice to have you touch upon the challenge of multiple use,
so that the difficulty of marginal valuation models are that if you're asking
10 a recreational fisher to value its second and subsequent fish when they've
already caught ten and let them all go is illogical to the point of nonsense.

The commercial fishing industry are catching a fish and using it. That has
a value. But in many cases, the recreational sector are using the same fish
15 three, four, five times.

MS CILENTO: Yes, I don't - I mean, I don't - I think we were trying to
get - get across the point that there are different benefits. It's not all about
catch. And try to get at what really matters in terms of fisheries
20 management if you are managing for multiple users. But obviously we've
failed to convey that.

MR PROKOP: Again, I think that the - that robustness of the text is
lacking. Those - if you think those things are there, they certainly haven't
25 been picked up by me or by the recreational sector. I think that's a valid -
very valid point. But what I would like to see an explicit recommendation
is to say that we need to go down the pathway, we need to be investing in
mechanisms by which we can make these objective statements, otherwise
everything will be done politically, and the statement I've said in here
30 from a local member was, "I've got 20,000 people who fish for fun in my
electorate and 10 who fish commercially. You tell me where I'm going to
vote on resource sharing discussions."

And to me, that's a sub-optimal result. So I think we've got a market
35 failure in terms of the engagement of the recreational sector in
management, particularly at the Commonwealth level. I think we need to
have overt investment in - that recognises its community return.

MS CILENTO: Yes. Just one last question, and I'm not trying to be
pedantic here, but one of the things that we bump up against is that when
you visit different jurisdictions - and there are a number of different
recreational fishing bodies that we've met - we are not presented with a
consistent methodology, and this is the way we'd like to go.

45 I think we've - and I take your point about whether we've done it robustly

5 enough or not, but I think we've made the points that you've made around the need for those methodologies. My question is, if we start detailing methodologies, do you think that there is going to be a consensus if we land on a particular methodology across different jurisdictions and different recreational representative bodies on the right way to go about this?

10 **MR PROKOP:** I think that the short answer is, you will find controversy in a sector that represents 23 per cent of the population. There a number of peak bodies that are representative bodies, in other words are driven by the lowest common denominator, which in recreational fisheries is pretty low. They're about maximising their catches and their catch shares.

15 I think that it also comes to the catastrophic market failure of the Commonwealth not to invest in visionary leadership that's able to provide a way forward from the recreational sector at the leadership level.

20 So one of the things that Recfishwest has done, in my opinion, is to recognise that we are not going to be - or when I was there, we were not going to be driven by the people who wanted to kill as many fish as they possibly could.

25 We wanted to say what were the directions that were needed in the past five years. I think the challenge for you as a Productivity Commission is to put in place a clear direction that leads us to that point without necessarily totally committing us to a particular pathway.

30 So if you say that we need to develop the economic expertise, the social expertise, the basis by which recreational property rights might be managed, by which reallocations and allocation processes might be undertaken, it would greatly strengthen the report.

35 If you make a definitive recommendation I would personally have no trouble with that, because it would lead to ongoing and open debate. But if we reconvene the Coolangatta Communique, I think that that provides enough of a sound basis for those discussions to be had.

40 Some of the jurisdictions where leadership is very wanting, and there are a number of states - and I've been national president of Rec Fish Australia on two occasions, so I'm very well aware of the issues about which you are talking. We need to provide a framework whereby the recreational sector has visionary leadership but understands that it needs to be participants, active participants, in management rather than active participants in political and overt political behaviour.

45

5 At the moment, all the rewards are in politics, and if you see the Port Phillip Bay decision is the most recent and unfortunate outcome where some good commercial fishermen lost their livelihoods because of the poor behaviour of a small number of commercial fishermen and the overt political behaviour of some high-profile recreational fishers.

MS CILENTO: Okay.

10 **MR PROKOP:** But my final point is that it would be really nice if you could recommend about urban fishing. Because you talk about participation in productivity. One of the things about the recreational fisheries is it's got a - the vast majority of its benefits accrue regionally, which - as indeed do most commercial fishers.

15 So the fishing industries have an enormous capacity to provide regional infrastructure and wellness, and I think it's a point that's worth making.

MS CILENTO: Okay, thank you very much. Heather and Darren. Hello, how are you?

20 **MS BRAYFORD:** How are you going? Good to see you again.

MS CILENTO: Good to see you.

25 **MS BRAYFORD:** And thanks for fitting us in.

MS CILENTO: No worries.

30 **MS BRAYFORD:** Took us a while to get organised.

MS CILENTO: Sure. Do you want to just introduce yourselves and launch in - - -

35 **MS BRAYFORD:** Cool. So Heather Brayford, Director-General, WA Department of Fisheries.

MR FOSTER: Darren Foster, Deputy Director-General.

40 **MS BRAYFORD:** Okay, so thanks for the opportunity to speak to you today. We have provided a WA Government submission - - -

MS CILENTO: Yes.

45 **MS BRAYFORD:** - - - which picks up some of our other colleagues. Not really a lot to say in opening. Just in general we certainly support the

general thrust of many of the recommendations in the report, and many of the recommendations you highlight have already been implemented in WA or are in the process of being implemented.

5 We certainly strongly support recommendations regarding the importance of security of access rights and allocation between the sectors, and I think I've spoken passionately about the difficulties of fisheries allocation versus what I see as fisheries management, and we're really in the game of allocation. I think we've heard some previous comments just then about
10 the difficulties of allocation.

The benefits of licensing the recreational sector in terms of getting that licensing frame and some of the data to support management and research, and some of the other activities around recreational fisheries management.
15 So they're some examples where - you know, harvest strategies, we're well down that path, so we support the general thrust.

For the record, the new Aquatic Resources Management Act in Western Australia, which has nearly completed its passage through parliament, we
20 anticipate it will be passed by the end of the year, which is very good news, supports the development of improved approaches to allocating and managing resources and is very consistent with some of the thinking in the Productivity Commission inquiry.

25 So we're pleased about that. We see that as a positive, and suggest to us that perhaps we're on a positive pathway, which is a good thing. A couple of more specific points, and I will defer to Darren for one of them, but just probably worthwhile talking a little bit about third party certification.

30 **MS CILENTO:** Yes.

MS BRAYFORD: Because I think there were some comments in the report that perhaps didn't capture what we see as the value in third party certification. In this case we've chosen MSC, but it probably doesn't
35 really matter which program it is.

And it's not so much in the context of some of the EPBC stuff that you raised, although I will come back to that. It's really around what we see as the benefits of that process. And it's not so much in the end point of
40 certification. There are benefits in that, and I can probably let others talk to that because I don't get certified, the fishery does.

MS CILENTO: Yes.

45 **MS BRAYFORD:** But what we have seen from our investment in MSC

has been, I think, quite profound and perhaps underdone in the report. And that's around - we have actually seen fisheries management improvements. And Shark Bay prawn trawl is probably a good example where we've had some difficulties in the past getting agreement on an appropriate harvest strategy for the fishery. With the MSC process we've actually been able for the first time to actually have an agreed harvest strategy.

5
10 **MS CILENTO:** So can I - - -

MS BRAYFORD: And I don't think we would have got that without the MSC process.

15 **MS CILENTO:** So I'm interested in what it is about the MSC, as distinct from what government could do or what, you know, fisheries managers and regulators could do?

MS BRAYFORD: Yes. I think it pulls some different levers.

20 **MS CILENTO:** Yes.

MS BRAYFORD: And shifts some incentive. Because there is a bit of a - you know, there's a reward at the end of it, but it's also highly transparent and visible, so it really does test much finer in a more - probably in a more visible, transparent manner than can often happen.

MS CILENTO: So the reward at the end of it is certification?

30 **MS BRAYFORD:** It's a tangible reward for industry.

MS CILENTO: Yes.

MS BRAYFORD: I think there's lots of rewards along the way, though, of which some improvements in one of them, and there's others which I'll come to.

35 **MS CILENTO:** So - and I'm - I am really trying to understand this, so - - -

40 **MS BRAYFORD:** Yes.

MS CILENTO: I mean, the argument's been put to us today, so - - -

MS BRAYFORD: Okay.
45

5 **MS CILENTO:** If the benefit to that fishery is ultimately accreditation, why - some would argue that they should then embark on that themselves, pay for it themselves, and be incentivised to improve their processes, including potentially come back to fisheries managers and saying, “You need to do things differently in order to get that result.”

So I guess the question for me is, what is the argument that you see for public moneys to be used to deliver that private result?

10 **MS BRAYFORD:** That’s probably a question for government, because government ultimately made that decision at the cabinet level to invest in this, and that was mainly around the social licence to operate perspective, because there was a general view that the community often doesn’t believe government.

15 So even though I report annually to parliament, I report to the Commonwealth around EPBC, industry has its own reporting requirements, there was a general feel that no one actually believes government because, you know, apparently - you know, we can make things up.

20 And they don’t also believe industry, because industry is conflicted. So the third party, rightly or wrongly, the third party independent approach was considered as a very useful tool to let the community know or have our credentials tested in a more - I guess by a third party, basically, that in fact what we’re saying is - - -

25 **MS CILENTO:** And what do you think - it’s an interesting proposition, because really the community - and this is no disrespect to MSC, it’s just the example that’s being put, but how does the community know to trust MSC?

30 **MS BRAYFORD:** The community probably doesn’t, except that MSC in this particular case is a partnership with the World Wildlife Fund, and people often support and support conservation organisations. Even though they have less accountability than a government department does, they strongly support their views, so in this case the MSC has strong support of the World Wildlife Fund.

40 **MS CILENTO:** Yes.

MS BRAYFORD: So that’s, I think, seen by the community to be a - well, if WWF likes it, it’s got to be a good thing.

45 **MS CILENTO:** Do you think the - I mean, we note in the report that the

objectives and priorities of the MSC and WWF are different to those that apply to government in managing fisheries resources, and that there are other things to be taken into account.

5 **MS BRAYFORD:** Yes.

10 **MS CILENTO:** But - including the costs of limiting catch for a higher standard of environmental benchmark, if I can put it that way. Do you think there are things that could be done to improve perceptions of existing fisheries management frameworks, you know, in terms of transparency?

15 I mean, there's a number of things that we've pointed to in the report where we think that there are reports that are already produced which we argue could be made available online quite readily.

MS BRAYFORD: Oh, absolutely.

20 **MS CILENTO:** Are there other measures that you would point to that might actually enhance the perceptions that the public has about what's able to be achieved through existing regulations?

25 **MS BRAYFORD:** Good question. It's a question that's being grappled with nationally at industry level, at - you know, FRDC's grappling with it, Commonwealth's grappling with it, all the jurisdictions are grappling with it. It's a very good question, and you need some sustained, enduring, embedded program, I guess, to keep those messages clear and consistent.

30 There is a difficulty with the fragmentation of industry across rec and commercial, but also differing approaches with jurisdictions.

MS CILENTO: Yes.

35 **MS BRAYFORD:** So it's very hard to get out those consistent messages. So our approach has been to have our science tested and our management tested by an independent party to try to give that extra push. And it's really interesting. Many years ago when we had the EPBC first came along and we had the ESD initiative, and we had to go through and do all of our ESD assessment to seek our export approvals, that caused a lot of heartache, it caused - very resource intensive, a lot of work to be done, and if you look back, at the time, it was probably, you know, "Why the hell do we have to do this?"

40 **MS CILENTO:** Yes.
45

5 **MS BRAYFORD:** It's exactly the same question you just raised. Why do we now have to show to the Commonwealth we're doing all of this? And when you look back, it was actually, while we've still got some issues with the EPBC, and I'm not distracting from those, overall the process was very good, because it actually helped put into focus and sharpen your focus on what you're doing and why you're doing it.

10 And I think third party certification is no different, is no different to that. You could argue all day whether or not you need it.

MS CILENTO: Yes.

MS BRAYFORD: Our government's chosen to go down that path.

15 **MS CILENTO:** I'm not - I'm really not trying to be difficult.

MS BRAYFORD: No, no, no.

20 **MS CILENTO:** I'm just trying to - - -

MS BRAYFORD: It's a really interesting - the other thing I think I just wanted to add there is not just have we seen real improvements I think in fisheries outcomes, but what we've really seen, and you can't put a value on this, is improved industry leadership, actually really stepping up and maturing through this process, and improved relationships between the department and industry as we go through this journey, and that's exactly what it is.

30 So I think there's a lot of intangibles that you can't really put a dollar figure on, and aren't really to do with the label at the end. It's, you know, the process that you go through. So we see that's driven some fairly significant improvements.

35 Again, not perfect, always got a long way to go, but I think has been a bit of a game changer in terms of our management.

40 **MS CILENTO:** So we heard previously about a probably slightly better relationship, if you like, between - or more collaborative or professional, however you want to describe it, relationship between commercial and recreational fishing.

What do you think, you know, the driver of that in WA has been?

45 **MS BRAYFORD:** A better relationship between commercial and rec?

MS CILENTO: Or at least a sort of - - -

MS BRAYFORD: You're not talking about MSC now, you're talking more general?

5

MS CILENTO: No, no. Yes.

MS BRAYFORD: I think there's a number of ingredients you need for that. You need to understand the data and to get some better data across both the commercial and the rec sector, so what's being used, and we've started to improve our recreational data and our recreational fishing understanding.

10

You need to operate at the integrated or resource-level approach, so it's really difficult in this day and age to just focus on Abalone, commercial Abalone and recreational Abalone. We really need to be talking about the Abalone resource and not so much focused on the sectors and the activities but the overall resource management.

15

So we've moved down that pathway. Probably not as far as I would have liked to, but we've started to move down that path, and looking at really improving that. So that's that resource-level management. The other thing is the recognition of rights and allocation and re-allocation, and that's where our new act I think is an absolute game-changer, because if you want to go down a rights-based pathway, with the rec sector as well, and I think that's very important for them, you need to deal with allocations up front. You need to have that process and (indistinct) and it's going to take you 10 years to decide. You're not getting the benefits of the rights.

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So I think it will lead to a simpler, hopefully more streamlined, approach to setting those allocations up-front, with then the capacity to actually adjust those as community expectations change, as values change, as circumstances change. But you need to get that - you need to get the pie a bit more structured.

35

So I think that's building some better relationships, and I think what's really important is being able to have a mature discussion with the two groups, and for those two groups with government also being able to show much better leadership than perhaps we've had historically, and I think over the years we've been getting to a much more mature space with our two sector bodies as well. And the department being able to mature in its approach and being able to have those safe discussions, when you can talk about the real issues without being distracted on individual aspirations.

40

45

MS CILENTO: Yes.

5 **MS BRAYFORD:** I'm not sure if that answers your question, but that's probably some of the key ingredients. So the data, the integration, resource level management, being able to - recognition of the rights in dealing with allocation and a process for reallocation as circumstances change, and being able to have that leadership and that culture within both government and the relevant sectors.

10 **MS CILENTO:** Yes.

15 **MS BRAYFORD:** So basically we think that third party certification probably is a bit underdone in terms of some of its value, noting there are some costs. Just quickly on EPBC and equivalents, and I understand what you're saying in the report around the differing - you know, the different roles of environment portfolio and fisheries, I still think there is some benefit in seeking not so much is accreditation is the right word, but equivalence.

20 **MS CILENTO:** Yes.

25 **MS BRAYFORD:** You know, MSC has pulled together from disparate sources the current knowledge that we have, and having to go away and re-do all of that for another process, you know, in the interests of streamlining and red-tape reduction, some capacity to have equivalence whilst not diminishing the EPBC, you know, role and the Commonwealth role I think would be of real value rather than us just duplicating work and re-working information.

30 **MS CILENTO:** Yes. So how different is the information that is needed to be pulled together for MSC versus EPBC?

MS BRAYFORD: I don't know, but we do have a project.

35 **MS CILENTO:** Yes.

40 **MS BRAYFORD:** We did have a project which is looking at exactly that between the Commonwealth Department of Environment and Energy, I think they're called now, and our department. So we've actually been looking at doing a mapping exercise to see how they actually match and whether you could seek equivalence or whether there might be some gaps which need to be filled, or perhaps there's other information that's even above and beyond.

45 So that project is still a live project as I understand it, but I don't know the

details of it. And I think one of the difficulties is the EPBC isn't that actual prescriptive in terms of how they do their assessments.

MS CILENTO: Yes, okay.

5

MS BRAYFORD: But we think equivalence, and in the interests of streamlining costs, is really our focus, but we don't want to diminish normal, you know, environmental processes.

10 But maybe that's a good segue onto EPBC if that's okay, Melinda? Just I'll get down into - - -

MR FOSTER: Okay. Well, look, thanks for your recognition in the report of some of the difficulties for the states in managing these interactions and meeting the requirements of the EPBC Act. It's well understood that often when one's dealing with conservation of species you've got to take a precautionary approach based on the information you have, but I guess the nub of the concern the Western Australian Government has is that the EPBC Act can sometimes be a little static in its listing process.

20

So while a matter may be listed and a sort of general distribution might be identified, new information comes along, perhaps localised populations are better defined, there may be variations in the viability of populations in different jurisdictions for, you know, local reasons, but there is not a lot of upgrading or improving of that information based on new things that come to light.

25

So our concern is that the Commonwealth isn't really investing in understanding the population and distribution and habitat dependences of these species, isn't really systematically ensuring there's a recovery plan for each of the species so that you've then got a sort of a menu of action, if you like, on particular matters so that the investment and action is strategic and targeted rather than opportunistic, and that the Commonwealth doesn't seem to have much of a practice of hindsight reviews of decisions that are made. So these decisions are often made by individual delegates in the Commonwealth department, and anyone who's worked in the field can tell you that, you know, you sort of know who the delegates are and what sort of response you might get from particular delegates, so it's very much dependent on the individuals, which is a sort of a - you know, points to a cultural issue in the department, and I think many of those delegates aren't really given much in the way of ground rules for making judgements about what conditions should apply.

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45 So without dwelling on the case study of Australian Sea Lions, it is a good

5 illustration of what we would view as a lack of risk-based decision making in the Commonwealth department, noting of course that one of the objects of the EPBC Act is also sustainable development, so it's not entirely about conservation and protection, but you know, ecologically sustainable development.

10 There should be a greater emphasis on risk-based decision-making, because if you don't have that mind-set then you're going to be putting a lot of onus or investment on one particular mitigation, which may be, you know, relatively low yield, but have a significant economic consequence.

15 So in the Australian Sea Lion situation for the Temperate Shark Fishery in WA, the cost to that fishery will be - the impact of that fishery will be about 30 per cent of its value being wiped off on the basis of documented interactions of seven over the last eight years, so - six of which were mortalities.

20 So the six mortalities over eight years, you know, there's a decision to remove 30 per cent of the value of the fishery. Now, that may be a valid decision, but there's no evidence that that economic consequence has been evaluated or weighted up against the sort of conservation gain, and it does seem almost disproportionate response to the nature of the problem, where there may be much more useful and targeted interventions with Sea Lion colonies that may achieve a better outcome.

25 So that's a good little case study in terms of the application of the act and illustrates that there's a lack of that check and balance.

30 **MS CILENTO:** I'm going to ask an unfair question now.

MR FOSTER: Sure.

35 **MS CILENTO:** And so you can just say, "I don't know," but are there - this is something - I think we're on the same page in some of the things we've talked about, and in our minds at least it's - you know, we've been talking about, you know, as low as reasonably practicable and those - very much that risk-based kind of approach to all this. Examples of where you think this is done well?

40 **MR FOSTER:** Look, I might declare a little bit of bias here, having formerly been employed by the Environmental Protection Authority here. One of the differences between the state and the Commonwealth is the state has an EPA that can make judgements in a context. You know the great difficulty here is obviously trying to legislate for sound judgement.

45

MS CILENTO: Yes.

5 **MR FOSTER:** And I guess the Commonwealth has to make decisions at the delegate level often, so officers making those decisions and those judgements, whereas in WA in environmental impact assessment we have and independent board of five non-public servants who make a judgement based on their own skills, knowledge and expertise, and looking at a range of proposals that come before them.

10 So Commonwealth doesn't really have an equivalent process, but you could address that with some guidance around the decision-making.

MS CILENTO: Yes.

15 **MR FOSTER:** I can't really name an example of where this, you know, operates effectively, but that's the nub of the issue from my perspective, that there's a risk-aversion in the Commonwealth public sector, and I guess an unwillingness to take the risk of making a judgement that might attract some sort of criticism or attract some reaction. Which is
20 understandable, but - - -

MS CILENTO: Yes, yes. We're trying to get - one of the other things we're trying to get at too is making sure you've got the right incentives, both for behaviour, but also for reporting, so you actually get a real sense
25 of - - -

MS BRAYFORD: Correct data.

30 **MS CILENTO:** - - - an accurate sense of what's really happening, and that you don't have the perverse incentives of a perceived zero-tolerance no interaction type model.

35 **MR FOSTER:** It's really a question of defining what is significant, and in the Western Australian context we have in our environmental protection procedures a significance test, which is defined. It's still fairly subjective, and it then rests on the judgement of the five individuals, but at the Commonwealth level I think there's great difficulty in getting the Commonwealth to identify what it considers to be significant. So it's constantly moving goalposts.
40

But it's not impossible to document, you know, the parameters of a significance test that would then - could then underpin the decisions made by delegates.

45 **MS CILENTO:** Yes.

5 **MR FOSTER:** And I'm sure all the states and territories would be happy to contribute to that exercise. But it's a cultural issue, ultimately. It's not really about legislation or - but how it's applied, noting that object in the EPBC Act which does allow for sort of trade-offs, if you like, and the Minister for Environment can make decisions having regard to economic and social consequences as well, so it's not outside the parameters of the EPBC Act to consider broader consequences, and I think having those decisions made a bit more transparent, documenting the economic and social costs, would actually help contextualise the decisions, and perhaps protect the delegates in making the decisions they have to make.

15 But ultimately, you know, all roads lead back to how current contemporary your list is, whether you have recovery plans in place for the key species, and whether you're actively maintaining and updating the scientific knowledge that's gleaned on these species. And really, if you wanted to be more proactive, you'd be actually targeting the research at the particular problems, or the issues in the (indistinct) that are under question so that you're looking at what are the sort of drivers of the low population, which may be something other than fishing.

MS CILENTO: Yes.

25 **MR FOSTER:** And in fact, in Australian Sea Lions hookworm is a significant cause of mortality of Sea Lion pups. So that sort of leads to potential other solutions that may be more effective in recovering a population. It's exactly the same in the terrestrial environment, I might add. The same sort of syndrome occurs, so - - -

30 **MS CILENTO:** Yes, yes. Okay. Anything else?

35 **MS BRAYFORD:** I think you've already received some - or had some further discussion with our office around ITQ fisheries and ITEs, and I wasn't in those discussions, but just from my perspective we do have ITQ fisheries, but we don't think it's a fix for every single fishery.

40 What is important, though, is to have, again, secure access rights and tradability of those units so the market can actually do its thing. So while we don't necessarily support carte blanche ITQs, we do support making sure we have tradability and transferability and capacity for the market to actually do its thing.

So I think you've already had those discussions?

45 **MS CILENTO:** Yes, I think it's - we're looking a little bit more closely.

MS BRAYFORD: Probably don't need to.

5 **MS CILENTO:** I think we wanted to - I guess what we're trying to sort of get people to react to is that if input controls are inefficient and you move to output controls, you know, that seems to be the way to go, recognising the limitations and how do we go about that, so - - -

10 **MS BRAYFORD:** Yes. You also need to get industry to move - once you move to ITQs, to realise that some of the inefficient rules and practices can actually be removed, and in my experience that's very difficult.

15 **MS CILENTO:** Yes. So we're looking a bit further at that, and, you know, we've had some feedback on some other aspects of moving to ITQs, and - - -

20 **MS BRAYFORD:** I think you're across our non-cost recovery arrangements, so I don't need - - -

MS CILENTO: Yes, yes.

25 **MS BRAYFORD:** And that's not a - that's just a comment. You know, we use a slightly different approach, or maybe very different approach to other jurisdictions, which we think has some benefits.

30 I guess that's it. One thing I will just reflect one, I had written down before I walked in the room, and I know that Mr Prokop spoke about it and I'm sure others have as well, this whole social-economic balance is extraordinarily difficult.

MS CILENTO: Yes.

35 **MS BRAYFORD:** It can be quiet expensive, and necessary in some areas, but perhaps not necessary in other areas where some agreed principles and pragmatic approaches might actually have a much greater benefit. As a bit of a close. And again, my comment about our main game is in fact allocation - - -

40 **MS CILENTO:** Yes.

MS BRAYFORD: - - - not stock management. That - if that - I think you understand what I'm saying?

45 **MS CILENTO:** Yes, I understand.

5 **MR FOSTER:** I just might add one point if I may on the question of compensation for, you know, actions to protect matters of MES. So I'm sure this has been raised by other people attending the hearing, but the - one of the concerns the state has is that there is no mechanism to offset the cost to the commercial fishing industry of some of the measures to produce interactions with matters of MES.

10 That's a policy decision of the Commonwealth. In the state circumstance, if there's a marine park created or there's an impact on a fishery, there's processes to allow compensation to be considered, and that's part and parcel of our business. At the Commonwealth level, that doesn't apply in terms of MES interactions, but there's nothing precluding that occurring. It happens for many other industries when there's an adjustment or a
15 significant implication of a Commonwealth policy decision. Sugar industry, car industry. And it doesn't seem beyond the pale to have some similar scheme where there's a significant impact on commercial fishing interests.

20 **MS BRAYFORD:** Particularly the cumulative impact of various decisions across different departments, you know? So the marine park impact versus - on top of some export accreditation impacts.

25 **MS CILENTO:** Okay, great.

MS BRAYFORD: That's - unless you have anything further? I'm happy to - - -

30 **MS CILENTO:** No, no, that's fine, that's great.

MS BRAYFORD: Cool.

MS CILENTO: Thank you for that.

35 **MS BRAYFORD:** Thank you.

MS CILENTO: Now the last piece of paper there tells me that - everyone here has spoken, I believe, but if there's anyone else who wanted to come forward and speak they can now? Otherwise that concludes
40 today's proceedings, and I will close the proceedings as this is our last hearing. Thank you.

45 **ADJOURNED INDEFINITELY**

[1.26 pm]