

SEA COUNTRIES OF THE NORTH-WEST

Literature review on Indigenous connection to and uses of the
North West Marine Region

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For the National Oceans Office Branch, Marine Division,
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- Yadgalah Aboriginal Corporation.

1. INTRODUCTION

1.1 Marine Bioregional Planning

The Australian Government, through the Marine Division of the Department of the Environment and Water Resources (DEW), is currently engaged in developing a Marine Bioregional Plan for the North West Marine Region, which includes Commonwealth waters off the coast of north-western Australia from the Northern Territory border to just south of Shark Bay. Commonwealth waters extend from state territorial waters (generally 3 nautical miles (5.5 kms) from the coast out to 200 nautical miles (370 kms), which is the boundary of Australia's Exclusive Economic Zone. The North West Marine Region is one of five marine regions that are currently the subject of marine bioregional planning processes as part of the implementation of Australia's Ocean Policy¹.

The aim of marine bioregional planning, which is being undertaken under provisions of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), is to provide guidance about marine environment conservation priorities, inform the Commonwealth Minister for the Environment and Water Resources when making decisions in respect of development or resource use applications in Commonwealth waters and facilitate the identification and establishment of Marine Protected Areas (MPAs). Section 176 of the EPBC Act² provides a general description of the provisions a Marine Bioregional Marine Plan which may include:

- Descriptions of biodiversity, economic, social and heritage values of the region;
- The objectives of the plan relating to biodiversity and other values;
- Strategies and actions to give effect to the plan; and
- Mechanisms for monitoring and reviewing the plan over time.

Figure 1 shows the location of Australia's five Marine Bioregional Planning Regions. Figure 2 shows the North West Marine Bioregional Planning Region in more detail.

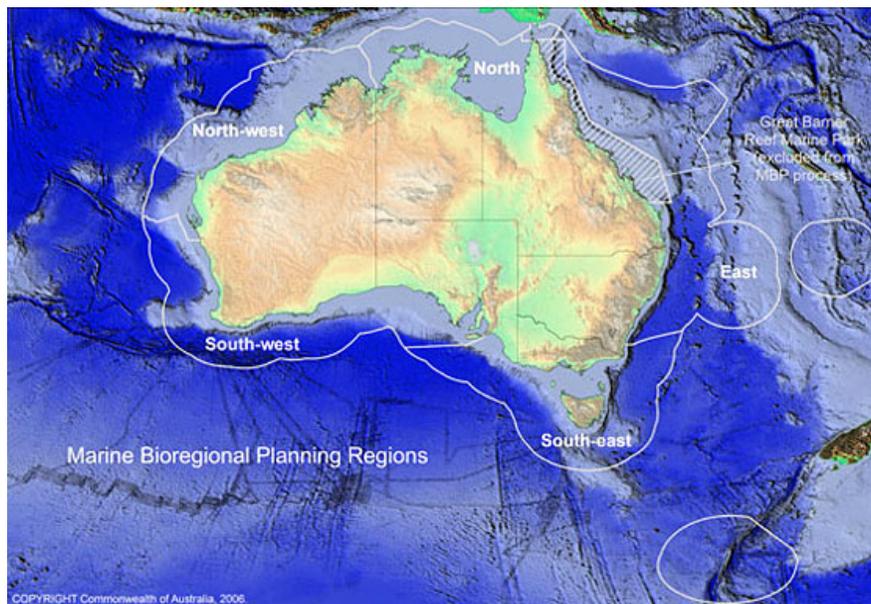


Figure 1: Location of Australia's Marine Bioregional Planning Regions

¹ Available at <http://www.environment.gov.au/coasts/oceans-policy/index.html>

² Further information on the EPBC Act is available at <http://www.environment.gov.au/epbc/index.html>

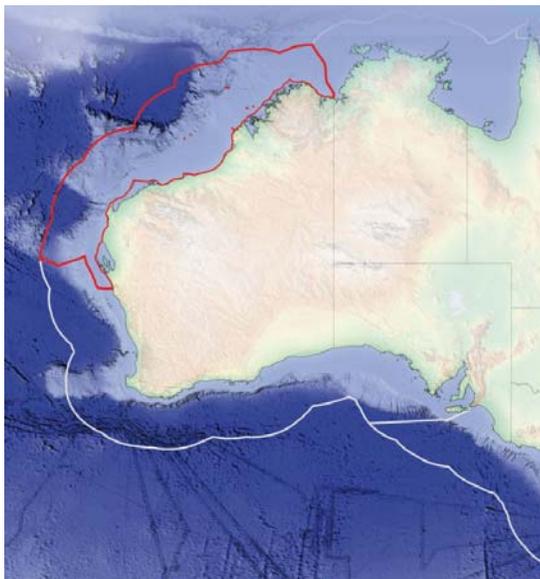


Figure 2: Map showing the boundaries of the North West Marine Region

The development of the North West Marine Bioregional Plan involves the following four planning stages:

1. **Developing a Regional Profile**, which involves gathering essential information about the region, including information about the geology, oceanography and ecology of the region, as well as certain economic and social information about the region. This information will then be published as a **Regional Profile** and will form the foundation of the subsequent planning stages.
2. **Developing the Draft Plan**, which will take about 12 months following the release of the Regional Profile. Indigenous people, other marine users and stakeholders will have an opportunity to provide input into this stage of the planning process, which focuses on identifying conservation priorities for the region, threats to those priorities and the options to address them. The social and economic impacts of proposed conservation measures, including possible MPAs will be evaluated, in consultation with Indigenous people and others with an interest in the area.
3. **Preparing the Final Plan**
The Government will consider public comment on the Draft Plan before concluding the Final Plan. At this stage, the final shape of new MPAs – such as location, size and zoning – will be decided and any action necessary to give effect to the Plan will be considered by Government. The Government will also carefully consider the impacts on industry and people before the Marine Bioregional Plan is formally adopted.
4. **Implementing and Reviewing the Plan**
Once the Marine Bioregional Plan is finalised, it will guide future Australian Government conservation activities in the Region. During that time, the Minister will be guided by the Plan for all decisions affecting the Region that the Minister must make under the EPBC Act. An implementation strategy for the Plan will be developed and the formal legal processes to declare the MPA network will commence. The Plan will be reviewed from time to time in light of new information and emerging priorities.

The Government of Western Australia has announced its intention of embarking on a complementary process of regional marine planning for state waters lying between the coast and Commonwealth waters, commencing in the south-west of the state.³

1.2 Aims of the Literature review on Indigenous connections and uses

The aim of the literature review is to provide an overview of Indigenous peoples' relationships with the marine environments of the North West Marine Bioregional Planning Region. The overview is based largely on publicly available information from books, journals and websites, with some additional information provided voluntarily by, and used with the consent of, Indigenous organisations from the region.

While the emphasis is on Indigenous connections to, use of and management of marine environments and resources within Commonwealth waters, the review inevitably includes mention of Indigenous interests in state waters and coastal land, consistent with Indigenous people's holistic views of Sea Country (see Section 2).

The literature review will be used to inform the *Regional Profile*, but will also be published as a stand-alone document for use as an information source by Indigenous communities and organisations, government agencies, marine resource users and others.

Research for the literature review was conducted through library and internet searches, supplemented by visits and telephone contact with some Indigenous and other organisations in the north-west. The following literature reviews were prepared during the regional marine planning processes for the South-east, South-west and Northern Marine Bioregional Planning Regions and were published as the following documents:

- ⁴National Oceans Office (2002) *Sea Country – an Indigenous perspective*. Assessment report for the National Oceans Office, Hobart;
- ⁵National Oceans Office (2004) *Living on Saltwater Country – review of literature about Aboriginal rights, use, management and interests in northern Australian marine environments* (2004). Background Paper, National Oceans Office, Hobart;
- Australian Institute of Aboriginal and Torres Strait Islander Studies (2006) *Sea Countries of the South: Indigenous interests and connections within the South West Marine Region of Australia*. Unpublished report to the National Oceans Office.

A literature review on Indigenous interests in the East Marine Region is currently in preparation.

1.3 Aboriginal interests in Commonwealth waters

All coastal areas lie with the traditional country of Aboriginal groups, all of whom have connections to and uses for the sea. The nature of those relationships and the extent of uses vary from area to area, based on differences in culture and differences in environments. Areas with extensive embayments (such as Shark Bay and King Sound) and islands relatively close to shore (such as the Dampier and Buccaneer archipelagos) are places where the saltwater peoples make extensive sea journeys, previously in rafts and canoes and now in modern powered vessels. In

³ Government of Western Australia (2006)

⁴ <http://www.environment.gov.au/coasts/mbp/publications/indigenous.html>

⁵ <http://www.environment.gov.au/coasts/mbp/publications/saltwater-lit-review.html>

areas with more simple coastlines and no adjacent islands or reefs Aboriginal people's use of the sea was typically restricted to intertidal and inshore areas.

However, because Commonwealth waters lie seaward of the line three nautical miles from any state land (including islands), all the waters surrounding these archipelagos, as well as the water lying between the islands and the mainland, lie within state waters and are not part of the North West Marine Region. Therefore, even coastal Aboriginal groups with strong connections to the sea may not make direct use of environments and resources lying within the Northern Marine Region. Nevertheless, coastal Aboriginal groups, whatever the extent of their use of the sea, have a direct interest in the management of the adjacent North West Marine Region. Activities and issues in the North West Marine Region that have a direct bearing on Aboriginal use of their sea country include:

- The transit and use of Commonwealth waters by dugongs, turtles and fish important to Aboriginal people;
- The transit and control of illegal foreign fishers;
- The transit and control of foreign shipping;
- The transit and control of unauthorised immigrants;
- The management of oil and gas exploration and extraction;
- Cultural stories, sites and Dreaming tracks that may extend into Commonwealth waters;
- Knowledge that the flooded countries of ancestors lie beneath Commonwealth waters.
- Aboriginal participation in commercial fishing;
- Aboriginal involvement in tourism and charter fishing enterprises.

For these reasons coastal Aboriginal people have a strong and direct interest in the planning and management of the North West Marine Region. Conversely, the planners and managers of the North West Marine Region need to have an understanding of Aboriginal connections to and use of sea country adjacent to Commonwealth waters. This report therefore provides an introduction to Aboriginal interests in the sea countries of north-western Australia, including coastal land, intertidal zones, state waters and Commonwealth waters.

2. Overview of Indigenous Connections to and Uses of the Region

2.1 A place of arrivals

Aboriginal cultures of the north-west, like all Indigenous cultures throughout Australia, contain stories, rituals and belief systems that relate to the creation of their environments and resources and the arrival of their people. Green (1988), for example, provides the following summary of the creation beliefs of the Bardi and Djawi people of the Dampier Peninsula and the Buccaneer Archipelago:

The Bardi and Djawi believe that ancestral beings travelled the seas and created the islands, reefs, sandbanks and marine species found within the sea. The adventures of these ancestral beings are recalled in song and story. The beings named all the features in the environment including particular places on the seabed where certain ritual activities occurred which, in some cases, resulted in ritual paraphernalia being left behind metamorphosing into particular marine features. Rituals were carried out by these ancestral beings from the north through the islands where certain named ritual sites were located. These rituals passed through the Dampier Peninsula and travelled south along the coast to Broome, La Grange and south-east into the interior.

Archaeologists have concluded that Indigenous people arrived in Australia somewhere in the north-west of the continent at least 50,000 years ago at a time when the sea level was at least 100 metres lower than present. Much of what is now the North West Marine Region was at that time comprised of extensive coastal plains with the coastline up to 100 kms westward of its current position. It is likely that it was somewhere on this ancient shoreline that bore the first human footprints, when people arrived from the nearby islands of what is now Indonesia. It was from this region that people spread around the coast and inland to fully occupy the continent within a few thousand years⁶. As the sea level began to rise about 18,000 years ago, flooding of the coastal plain began and the coastal dwellers of the North West would have been forced inland. By the time the sea level stabilised about 6,000 years ago ancient mountaintops had become islands, and escarpments once far inland became the new coastline.

The Mandu Mandu Creek rockshelter on the western side of Cape Range on the Pilbara coast contains the earliest archaeological evidence of Aboriginal use of marine resources in Australia. Morse (1988) has concluded that this shelter was first occupied about 25,000 years ago when the shoreline was about 6km from the cave. Marine shells and fish bones found at the site indicate that the shelter was used intermittently for about 5,000 years before being abandoned about 19,000 years ago. The cave, now only one km from the shore, was reoccupied about 2,500 years ago, several thousands years after the sea had stabilised at its current level. The remains of marine animals found at Mandu Mandu Creek rockshelter indicate that Aboriginal people had the knowledge and skills to exploit a wide variety of marine resources prior to the establishment of contemporary coastal and marine environments.

Since about the 1500s the North West Marine Region was also one of the destinations of the annual visits by Macassans⁷ from what is now called Sulawesi in Indonesia on sailing boats to collect Trepanng (also called Beche de Mer or Sea Cucumbers) from the shallow coastal waters across northern Australia. They brought dugout canoes, glass and metal in exchange for turtle shells and assistance in collecting Trepanng. This appears to have been generally a mutually beneficial trading relationship that respected Aboriginal peoples' authority of sea country, land and resources, though

⁶ Flood (1995)

⁷ The crews on Macassan boats included people from many parts of what is now Indonesia.

there are also reports of hostile interactions between the Macassans and Aboriginal people (Crawford 2001). Some Aboriginal people from the north-west travelled back with the Macassans to their homeland. The relationship came to an end when the Macassan visits were banned by the newly established Commonwealth parliament in the early 1900s.

Stone hearths (used for cooking Trepang) and Tamarind trees (planted by the Macassans) found along the coast of northern Australia are the most conspicuous evidence of these annual visits. Crawford (2001) reports a rich Aboriginal oral history that provides detailed information on the activities of the Macassans:

.....the Indonesian sailing vessels arriving from the north would sail as a fleet, each boat in line, as far as Cassini Island, which is about thirty nautical miles from the mainland. There they would make their base in a cave while they fished on the local reefs and also on nearby Long Reef. Because Cassini Island lacks the water and timber needed to process Trepang, the Indonesians would sail for the mainland as soon as they harvested a load. The indented bays of Cape Bougainville provided excellent shelter, and there was a copious supply of fresh water. The Indonesians would establish land-based sites where they would boil and dry the trepang from the Cassini area as well as that collected locally. Once they had processed the trepang, one half of the fleet would sail south to work its way down the west coast, while the other half went to the east to work the northern coast.

The North West Marine Region was also the entry point of the first European visitors to Australia, when the Dutch navigator Dirk Hartog landed at Shark Bay on the Pilbara coast in 1616. Several other Dutch ships from the Dutch East India Company followed, but the Dutch had not come to colonise. British colonisation of the north-west began on the Pilbara coast in the early 1860s, about 30 years after the establishment of the Swan River Colony (now Perth). Initially established to support frontier pastoralists and wheat farmers, the port of Cossack (near present day Roebourne) soon became the centre of the new pearl industry and therefore the site of the first interactions between the saltwater people of the north-west and commercial culture of the British settlers (discussed further in Section 2.1).

2.2 Aboriginal populations and land in the north-west

Aboriginal people are resident in most of the coastal towns and settlements of the north-west and continue to utilise marine resources of one form or another⁸. Large regional centres such as Geraldton and Carnarvon have a high number of resident Aboriginal people, many of whom have traditional connections to inland regions. Some of these people fish for purely social reasons as well as economic ones. Onslow, Roebourne and La Grange are similar in the marine exploitation patterns. The methods used tend to be localised and on a small scale, supplementing people's meat-based diets.

Other centres, such as Broome, tend to be made up of coastal Aboriginal people. These people rely heavily on sea resources as these make up their traditional and preferred diet. People in Broome often spend a great deal of time netting and catching fish. In this area, fishing plays an important role in strengthening ties to the sea as well as contributing significantly to their domestic economy by obtaining food directly from the environment rather than from shops. Most of the coastal Aboriginal people of the Kimberley live in Broome, Beagle Bay, Lombadina, One Arm Point, Kalumburu, Oombulgari, Bidiyadanga, Derby and Mowanjum.

⁸ Green (1988) and Smyth (1993)

2.3 *Sea Country and Customary Marine Tenure*

Like other coastal Indigenous groups around Australia, the saltwater peoples of the north-west are associated with discrete clan estates or tribal areas, often referred to in contemporary Aboriginal English as ‘saltwater country’ or ‘sea country’. ‘Country’ refers to more than just a geographical area: it is shorthand for all the values, places, resources, stories and cultural obligations associated with that geographical area. For coastal Aboriginal peoples, ‘country’ includes both land and sea areas, which are regarded as inseparable from each other⁹.

There is a large research literature on various aspects of sea country and its place in Aboriginal societies. Although anthropologists and archaeologists have documented coastal Aboriginal societies in northern Australia since the 1920s, Peterson and Rigsby (1998a) point out that the concept of sea country as an extension of traditionally owned estates on land did not become the subject of study until the 1970s and was stimulated further by land and sea claims under the *Northern Territory Land Rights Act 1976* (Clth), and later under the *Native Title Act 1993* (Clth). The Land Rights Royal Commissioner, Mr Justice Woodward, refers to the existence of sea estates in his First Report (Woodward 1973). Green (1988) notes that the Aboriginal Land Inquiry held in Western Australia in 1983 also heard evidence of Aboriginal interests in sea country:

The communities argued the case that their members had interests in the land and sea, that people exploited certain marine resources, and that they had an intimate knowledge of their environment. Substantial evidence was given as to the existence of ritual and mythological sites in the sea. Davis and Prescott (1985) substantiated their claims with supporting evidence from the Northern Territory. The communities felt that areas of sea should be closed for their use, in order to protect the, economic, ritual and mythological sites, within them. They felt that European professional, fishermen should not be able to fish in these closed areas and they said that existing pearling leases should be controlled by the communities. The concept of Aboriginal rangers patrolling the seas to ensure that no illegal fishing occurred and to ensure that the shell beds and fishing areas were properly monitored was suggested.

The Commissioner, Paul Seaman QC, recognised that these people did have strong claims to protect the sea for their use. He recommended that water should be protected for Aboriginal people for uses which were still a part of traditional life. Traditional life was defined to include access to traditional activities connected with significant areas in, or associated with, the sea, or customary modes of foraging or fishing in or near the sea (Seaman, 1984). Seaman accepted that these Aboriginal people had due claim on a traditional basis to areas of seas in and around the Dampier Peninsula and he recognised that people who today hunted dugong and turtles with dinghies and outboard motors were still hunting in a traditional mode.

Peterson and Rigsby (1998) note that the first anthropological writing about Aboriginal estates in the sea comprise submissions to the *Joint Select Committee on Aboriginal Land Rights in the Northern Territory* (Morphy 1977). This was followed by studies which included the mapping of marine estates on the east and west coasts of Cape York Peninsula (Chase 1980; Chase and Sutton 1981) and reports associated with coastal land claims along the Northern Territory coast, including Keen (1980), Davis (1984) and Palmer and Brady (1984).

⁹ Smyth (1994)

In anthropological literature the proprietary aspects of sea country are often referred to as “customary marine tenure” or “CMT”. The development of research in to CMT in Australia, and regional differences in its meanings, are reviewed in a monograph devoted to the topic edited by Peterson and Rigsby (1998). Most of the contributing authors focus on documenting aspects or idiosyncrasies of CMT in particular Aboriginal societies and coastal environments, consistent with a broad definition of CMT, such as that provided by Cordell (1991a), who states that:

Sea tenure is closely bound up with kinship, sharing, traditional law and authority, and other structures that shape cultural identity.

However, Pannell (1998), questions the usefulness of such a broad definition of CMT:

One of the problems with this more inclusive definition of CMT..... is that it tends to define CMT out of existence. CMT is now so broad in its scope and so encompassing in its subject range that it loses its power of discrimination

Pannell (1998) notes that CMT is rarely used in the legal literature, where the preference is for terms such as “sea rights” (Allen 1993; McIntyre 1993; White 1993), “native title and the sea” (Bartlett 1993) and “fishing rights and interests” (Sutherland 1996). Nevertheless, Pannell (1998) concludes:

This is not to say that CMT has little value in terms of its popular or political appeal.And perhaps it is ...in the negotiation of policy guidelines, legislative and regulatory initiatives, environmental planning, management strategies, development agreements, conservation measures, heritage protection and social equity outcomes between Indigenous and non-Indigenous interests, that the real value of CMT lies.

Though there may be differences in terminology, there is widespread agreement that a fundamental aspect of Aboriginal peoples’ past and ongoing relationship with the sea is that particular groups of people (be they clans, wider kinship groups or contemporary Aboriginal communities) have a complexity of rights and interests over particular areas of the sea and adjoining coastal land.

The following extract from *Australia’s Oceans Policy Issues Paper No.6 Saltwater Country*¹⁰ provides a general summary of area-specific relationships between Aboriginal groups and the sea before British colonisation and which forms the basis of their relationships with sea country today.

Clans and country

Although there was considerable diversity between the cultures of the hundreds of Aboriginal groups around Australia's coast, there were some common factors which reflected the relationship of Aboriginal people to the sea around Australia.

The fundamental social unit around most of coastal Australia was the extended family or ‘clan’. Clan membership was typically inherited from one's father, but in some parts of Australia, clan membership was passed down through the maternal line. Intimately associated with each clan was their estate or ‘country’. For coastal clans their country always included the adjoining estuaries, beaches, coastal waters and ocean. Groups of clans speaking a common language formed a wider social group, sharing ceremonies, belief systems, technologies and subsistence strategies.

The ocean, or saltwater country, was not additional to a clan estate on land, it was inseparable from it. As on land, saltwater country contained evidence of the Dreamtime events by which all geographic features, animals, plants and people were created. It

¹⁰ Smyth (1997)

contained sacred sites, often related to these creation events, and it contained tracks, or Songlines along which mythological beings travelled during the Dreamtime. The sea, like the land, was integral to the identity of each clan, and clan members had a kin relationship to the important marine animals, plants, tides and currents.

Most Aboriginal people with marine clan estates were coastal mainland dwellers. However, many lived exclusively or periodically on offshore islands, particularly off the Queensland, Northern Territory and Kimberly coasts. These island dwellers were particularly dependent on the subsistence resources of the sea and they maintained control of large marine estates radiating out from their island homes.

Extent of saltwater country

The extent of pre-colonial use of Australia's oceans by coastal Aboriginal groups varied through time and between regions. Following stabilisation of the sea level at its present height, about 6,000 years ago, Aboriginal patterns of marine use observed at the time of British colonisation, began to be established. Around northern Australia, this included extended sea voyages by canoe to exploit resources and manage clan sea country, in some places out of sight of the mainland.

Rouja (1998) reports that in the Bardi language, family/clan estates are known as *Buru*:

These Buru are roughly grouped into four large regional groupings. Smaller family groups lived in particular camps running along the coasts within particular Buru, shifting from camp to camp within and between Buru on a semi-nomadic basis, possibly following changes in the seasons and according to specific ritual calendars. As the larger estates were probably exogamous, families enjoyed ties that gave them access to all parts of Bardi territory. It is thought that traditionally the boundaries of these Buru extended into the sea as far as a man could swim. Elkin (1933) estimated that at the time of white settlement the population was approximately 1500, making the population density at one person to every 5 square miles. An even higher population could be inferred if we consider that almost all the camps were situated along the coast, evidenced by the tendency for estate boundaries to become diffuse the further inland they went. The Bardi of most of the Northern Buru were closely associated with the island-living Djau (Djawi). With the establishment of the Sunday Island mission in the 1890s they were groups together so that by 1932 Elkin considered them to be identical. Some Bardi still feel attached to traditional lands they are connected to through Djau ancestors.

2.4 Customary hunting, fishing and gathering

Green (1998) provides the following summary of early records documenting Aboriginal maritime resource use in the north-west:

Early accounts of the Marduthunera, Ngarluma and now the extinct Yaburara people in the Dampier Archipelago, reveal the preparation of mangrove seeds by boiling them in conch shells prior to removing their toxic properties by leaching (Harper, 1886; Hall, 1971; Bates, no date). Descriptions are given of spearing turtles by using short stabbing sticks (Stow, 1981). The use of nets appeared to be widespread among these coastal, people. A net from Nickol Bay exhibited in Perth in the 1880s measured 27 by 3 feet (Inquirer 23.2.1887). These nets were made from spinifex and there were different types utilised for different purposes. One described by Ridley in 1863 was funnel-shaped, and others resembled small stake nets made up of a two-stranded twine (Ridley, 1863). The use of drag nets from rafts offshore was also common.

People gathering for ceremonial purposes on islands, or to exploit resources such as turtle eggs in the breeding season, necessitated inter-island voyaging. There were several accounts of the log rafts used in the Dampier Archipelago by the Aboriginal inhabitants. King described in detail rafts comprised of two or three short mangrove logs tied together and being propelled by paddling with the hands (King, 1969). There are also inferences of the use of inflated turtles tied together as one man rafts.

The Wumambal and Gambre people in Admiralty Gulf exploited the islands and the reefs to the north and took particular, delight in boating skills and in the harvest of the sea (Crawford, 1983). The coastal Worora were in a similar situation, although the larger islands were permanently inhabited, as were the Montgomery Islands and the Sunday Island group (Crawford, 1983).

In discussing the Bardi people of One Arm Point and Lombadina, it is pertinent to note that the traditions and views observed earlier this century by people such as Elkin (1932) and Worms (1952), still hold true today. The Bardi and Djawi travelled along the coast and island-hopped on mangrove wood double rafts. The wood for the rafts being located only in restricted localities, special journeys of great distances were made in order to harvest suitable wood. Family groups often travelled on the one raft and groups of families travelled together from one locality to another.

Baler shells were used to carry water on these long voyages. Neap tides were the optimum tides used to island-hop, with people planning their voyages around their comprehensive knowledge of the currents and winds.

Crawford (1983) contrasted the differences between the customary marine economies of coastal Aboriginal groups whose clan estates included offshore islands and those whose clan estates did not include islands. The northern Wunambal people who occupied cape Voltaire, and the northern Gambre who occupied Cape Bougainville, had country on the coast of the mainland and also seasonally exploited resources of the islands of the Institut Archipelago.

These people regarded themselves as 'blue water' people, seamen who had a particular affinity with the sea. They built their expertise in such matters as boat handling, knowledge of the tides, movement of marine life etc. However, both groups retained a mainland component in their economies because the limited supplies of water on the islands prevented permanent occupation. Marine resources were a much more significant element

in their economy than for those Aborigines living, for example, in the bays of the Kimberley who exploited coastal resources, but who did not have a string of islands available to them and who made only limited coastal voyages. At the other end of the scale were the economies of the Djawi (Djawi) of the Bonaparte Archipelago who seldom visited the mainland.

Crawford (1983) provides the following summary of seasonal movement and resource use by the northern Wunambal and Gambre:

In May, there was a general migration south, with reliance on island and riverine resources such as tubers; the land was burnt, hunting took place, and the seas were closed by the south-east trade winds. In September, there was migration to coastal regions, and, especially in the following two months, heavy reliance on fish, stingray and shellfish resources. In November, the northern Wunambal and Gambre made their way north. With the coming of the wet season in December-January, they started to exploit the islands and reefs of the Institut Archipelago, taking large fish, dugong and turtles, and this continues until April.

Crawford (1983) notes that for the Wunambal and Gambre people, therefore, marine resources provided the food economy for two thirds of the year and that the voyages to and from the islands were hazardous journey in rafts, supplemented later canoes obtained from the visiting Macassan Trepan fleets.

It can be concluded from the above and other research reports¹¹ that all saltwater peoples of the north-west engaged in, and to greater or lesser extent continue to engage in, a diversity of marine resource use activities, including:

- Dugong hunting;
- Turtle hunting;
- Turtle egg collecting;
- Seabird egg collecting;
- Spearing fish;
- Reef trapping fish;
- Herding fish;
- Line fishing;
- Collecting fish in stone fish traps;
- Poisoning fish;
- Gathering shellfish and other marine resources.

Customary marine resource use has been documented to the greatest extent for the Bardi Jawa people of the Dampier Peninsula and Buccaneer Archipelago, to the northwest of Broome. The following summary of Aboriginal customary marine resource use is derived from research undertaken by Philippe Max Rouja for a PhD thesis titled *Fishing for Culture: towards an Aboriginal theory of marine resource use among the Bardi Aborigines of One Arm Point, Western Australia*¹². It is anticipated that research undertaken for sea country native title claims currently underway on the north-west will result in significant additions to the literature in this field once the material become publicly available following the conclusion of the legal processes.

¹¹ Green (1988), Berson (2004), Rouja (1998) and others

¹² Rouja (1998)

A key feature of the north-west marine region that influenced many customary marine resource use activities was and is the huge tidal range in this part of the Australian coast. The daily fluctuations of up to 12 metres on a king tide, and the shallow, gently sloping coastal seabed, result in vast areas of intertidal land and reef flats available for marine resource harvesting. The huge tidal range also results in very strong tidal currents, especially between islands and at the entrance to embayments. The strong tidal currents are a navigational hazard, but they also provided opportunities for skilled and knowledgeable Aboriginal people to travel long distances on rafts and canoes between the mainland, reefs and islands aided by tidal currents (discussed further in Section 2.1.3).

Dugong and turtle hunting

Each Indigenous group across northern Australian has their own pattern of seasonal use of dugongs and marine turtles. The following quote describes the seasonal use of dugongs, turtles and other marine resources by the Bardi people from the One Arm Point Community.¹³:

Older Bardi reveal an acute awareness of environmental factors which may affect the procurement of marine species. There is an understanding of the tides, the times of resource availability and the characteristics of the species being hunted. One example of Bardi environmental awareness is reflected in how they divide up their seasons, which relate closely to prime times for exploiting particular marine resources, for example:

Barlgana alubur: March-April when the south-east wind starts and marks the beginning of the dry season;

Niyarda, barlgaqa: May-August, the middle of the south-east wind season when strong winds occur and the Dugong season starts in *Mangala* (July);

Djalalay: August-September, the south-east wind finishes and the westerlies start, the dugong season ends;

Lalin: October-December; westerly winds become strong. The weather becomes hot, married turtle time and ceremonies start;

Djandjala Balburgin: December, rain clouds come from the north;

Ungulgul: December-February, north-west wind blows, rainy season, married turtle season ends in January.

The knowledge of the seasons reflects the type of resources available for exploitation. The case of the green turtle, the main species hunted at One Arm Point is one example concerning this knowledge. The most productive period for hunting *kulkil* (turtle) is at low tide, at the beginning of *Lalin*, or at married turtle time. This is the time when turtles are mating and are found floating on the surface of the water and they tend to be quiet and not easily disturbed. They are also referred to as being 'fat' at this time, although turtles are generally hunted all year round.

Only men hunt turtles due to the ritual connotations associated with the procurement of this marine reptile; women and children often catch small turtles at low tide on the exposed reefs, in the tidal channels and lagoons. Once a turtle has been harpooned, there are rites concerned with the butchering and distribution of the meat. Each anatomical feature of the turtle has a specific name, and some of these names also have ritual connotations. 'Fat' turtles are highly prized and are commonly hunted in specific locations offshore. Ritual places on the land are used both as viewing platforms to observe turtles prior to hunting,

¹³ Green (1988)

and also as increase centres where rituals are performed to ensure an adequate supply. Despite the abundance of turtles in the area, people generally take only enough to satisfy their immediate family requirements. Different locations provide different marine resources. For example, *Wanburura* is a stand of mangroves on the east side of King Sound. This is one location where the Bardi people collect wood for rafts. The nearby island *Djanutian* is used for constructing the rafts as it is a good camp and also provides turtle eggs in season. *Mayunlambuli* is a dugong hunting area.

Customary law and practice provided rules for how the various cuts of dugong and turtle meat were to be distributed. The assigned cuts of meat are:

Dugong parts:

<i>Nambu</i>	top of head
<i>Gandgi</i>	backbone steaks
<i>Nung</i>	backbone after the ribs, entire cross-section of dugong
<i>Gambal</i>	tail and 2-3 vertebrae in cross-section
<i>Nigabum</i>	cross-section between <i>Nung</i> and <i>Gambal</i>
<i>Nilang</i> (or <i>nilarang</i>)	layer of meat covering ribs and stomach
<i>Miring</i>	gut case lining
<i>Oralang</i>	chest
<i>Oroden</i>	chin part down

Turtle parts

<i>Manbin</i>	left and right side separately
<i>Janbal</i>	left and right side separately

Rouja (1998) notes that:

All of the above are the pieces into which the dugong and turtle are butchered. In many cases claimed pieces constitute pairs of the above. This is done mainly to ensure that the person receives a good combination of meat and fat as some pieces are predominantly one or the other. Pieces such as nindil or miring have a very high fat content through the meat and so are very highly valued. Meat that is low in fat tends to be very tough especially if the meat is eaten fresh.

In addition to the assigned cuts of meat there are “free” pieces that are not assigned to anyone in particular and may be shared with anyone, including children who have gathered to witness the butchering or cooking. The free pieces are:

Dugong parts: *Irri* smaller rib bones at the bottom of the rib cage

Turtle parts: *Nama* head
Lanjar chest plate
Iwalgul carapace

The pattern of meat distribution of each hunter is set at birth and comes into effect as soon as the young hunter makes his first kill. The hunter’s first obligation is to distribute designated cuts of meat to his *Yagu* and *Jawoulo*, two designated male kin assigned to play a major role in the child’s cultural upbringing. It was a feature of traditional Bardi law that hunters did not consume any of the meat from dugongs or turtle that they had caught. Green (1988) reports that cultural restrictions on the use of dugong relates to the belief that dugongs were once human and ritual

songs and stories corroborate this belief. Before a dugong was butchered the hunter would draw lines upon the carcass in charcoal according to traditional patterns. Ritual songs were sung as the dugong was butchered. Over the last 30 or so years, social changes (such as the relocation of Bardi people from the Sunday Island Mission first to Derby and then to One Arm Point during the 1960s) and technological changes (such as access to power boats, vehicles and freezers) have led to significant changes to the practices associated with dugong hunting and the traditional meat distribution system. Nevertheless, dugong and turtle meat continues to be distributed and shared within families and communities. Section 4.1 includes a discussion on current Indigenous initiatives to implement community-based management of dugong and turtles.

Collecting turtle eggs

Eggs of Green turtle are mostly collected during the *Lalin* and into the *Mangal* season. Typically hunters in boats at sea will notice turtle tracks on a beach and return there next day to look for the nest. A metal rod or spear is pushed through the nest. If the end of the spear becomes wet and sticky then the nest has been found. Generally all the eggs of one nest are harvested, but many beaches where turtles nest are not exploited. The eggs are eaten raw or cooked and are considered a delicacy.

Fishing

Fishing was and is undertaken using a variety of technologies and practices, including spears, specially designed boomerangs and traps. Rouja (1998) concludes that the huge tidal range and strong tidal currents have influenced Bardi fishing activities:

Bardi fishermen have been using the huge tides to their advantage for millennia. This may account for the surprising lack of archaeological evidence in the form of shell mounds in the outlying islands. Rather than bring large quantities of oyster back to particular camps where they could be processed, the Bardi would walk out to these at low tide where they lay on exposed rocky surfaces. Here they burnt spinifex grass directly on the exposed rock oysters and ate the muscle in place as the shells opened.

The spring low tides expose vast areas of intertidal land adjacent to the coast and islands of the north-west – some islands may double in size during these tidal events. Even during normal tides the daily tidal cycle exposes large areas of coastal and island intertidal reef flats, containing a myriad of water-filled pools and channels. Reef flats are therefore a very significance environment for fishing and other marine resource harvesting (including octopus and shellfish). Fish are caught by blocking exit channels with temporary weirs as the tide recedes and thus trapping the fish in isolated pools. Fish can also be speared as they try to escape through well defined channels. Some fish species, particularly Surgeon Fish (*Gambal*) and Spinefeet (*Barbal*), can be herded into areas of the reef flat where they can be readily trapped by the falling tide. Rouja (1998) reports that in another Bardi fishing technique on reef flats is to catch *Gambal* using unattended Spinifex grass traps:

*Large quantities of long spinifex grass are collected and carried onto the reef or tidal rocky shores at low tide to channels leading off the reef. Here they are laid down perpendicular to the shore and the tidal current, with rocks placed on their seaward end. As the tide rushes in, the grass is pushed flat to the bottom, and the *Gambal* go in over these onto the reef flat. When the tide turn, it picks up the grass and stands it on end, the rocks preventing it from being washed away. *Gambal*, confronted with this barrier when leaving the reef, will not pass through. The flimsy grass psychologically imposes an impassable barrier and the fish search for alternative routes of escape. If none are available they eventually*

retreat into crevices. The tide low and the reef dry the fishermen return to the area and pull the Gambal from their holes, biting them in the head to kill them. Gambal are noted for a pair of sharp spines attached at the base of the tail and the Bardi fishermen, wary of these, tend to kill the fish right away.

Poisons extracted from the branches and roots of several species of mangroves and shrubs (most commonly *Tephrosia sp*) are also used to catch fish on exposed reef flats. The roots are crushed to a pulp on rocks near the shore and mixed with sand. The mixture of sand and pulp are then taken to a selected reef flat shallow pool with coral outcrops. Handfuls of the poison mixture are pushed into crevices at the bottom of the coral outcrops. After a while, fish begin to emerge from their crevices, swimming erratically and are easily speared or captured and thrown onto the dry reef flat. The main fish captured by poisoning are the *Gambal*, *Inglan* (barramundi cod), *BulgaraniI* (flowery rock cod) and squirrel fish¹⁴.

Rouja (1998) explains that fishing on reef flats also occurred at night:

Traditionally, the exposed reef flat was also the focus of night fishing by torch light. Torches made from the rolled bark of saltwater paper bark tree (melaleuca acaciodes) were carried and used to find fish as they slept in the shallow pools. Wrasses were notoriously deep sleepers and the Bardi would hit these over the head with a fishing boomerang held in the hand. Some of the elder Bardi liked this method as it did not damage the fish. Another simple method was to light a small fire on the edge of the tide and as fish swam to the light they would be hit with the fishing boomerang. Some would actually jump from the water to the fire, breaching themselves. The number 7, or fishing boomerang, was apparently the preferred tool for this kind of fishing, as the spear, when hitting the bottom, would scare all the fish away. The boomerang only penetrating the surface did not have this effect. Another simple but effective technique was to crush red claw crabs on the dry rock or reef as the tide was coming in. As the water hit this area the fish would go crazy and rush in, almost throwing themselves onto the dry land. Here they would be speared or hit with the boomerang.

These days most reef fishing activity is carried out by line fishing or using a spear gun during high tide when the reef is submerged. Despite the dangers of saltwater crocodile, spear guns are also used to hunt fish in mangroves at high tide. However, traditional light fishing spears are also still used in mangroves to catch crabs, several species of fish and rays.

Rouja (1998) explains that boulders in the sea were and are important hunting and fishing sites for Bardi:

Traditionally, fishermen would use these (boulders) to take shelter and wait out tidal changes so as not to be swept away on their rafts, also using them for hunting the turtle that swim into these areas for the same reasons. For catching fish, spear guns are by far the most practical tool in these areas and hunters can position themselves against a boulder or between the facets and simply wait for the fish to swim past. Large sharks are common in such areas and the hunter mainly has to be careful not to be caught by the current and swept away.

¹⁴ Rouja (1998)

2.5 *Aboriginal water craft of the north-west*

Along the Kimberley coast, where offshore islands were either visited by mainland Aboriginal groups or were their permanent home, double mangrove log rafts were used as a form of transport to and from the islands. The rafts were paddled by hand or paddle and the sometimes long sea journeys were aided by the swift tidal flows of the region. The boats are made from two layers of mangrove trunks joined together by pegs. Both parts of the raft are fan-shaped resulting from the pronounced tapering the poles used. The stern section is wider than the bow, where a lesser number of poles are used. Parts of the boats often sat below water. A circle of pegs on the stern section of the raft was used to hold the seafarer's possessions. An example of the Bardi double raft, made at One Arm Point in 1980 is on display at the National Maritime Museum in Sydney.

Dugout canoes, often made from *Bombax* trees, were also used by Aboriginal people in the north-west, a technology introduced by the visiting Macassans from the 1500s to the early 1900s. Crawford (2001) reports that canoes were regarded as more maneuverable and less susceptible to the influences and wind and tide than rafts. On the other hand, rafts were more stable and unsinkable.

Aboriginal people acquired canoes from the visiting Macassans either as gifts or by stealing them. – sometimes leading to outbreaks of hostility. Over time Aboriginal people modified the design of canoes to suit local needs (Crawford 2001)

2.6 *Aboriginal involvement in the Pearling Industry*

Saltwater people of the north-west highly valued pearl shells (bi-valve mussels with a mother-of-pearl lining) long before the shells became a commercial resource. Pearl shells were used by Aboriginal people as ceremonial objects, as body adornments and for their medicinal qualities. The shells were traded between neighbouring groups, though the pearls found occasionally inside the animal apparently had no value.¹⁵

Initially Aboriginal people of the Pilbara coast, and soon after the Broome region, assisted the white pearlshellers where to find and collect pearlshell. However, as shallow-water pearlshells became scarce and it became necessary to dive for shells in deeper water, the relationship between coastal Aboriginal people and white pearlshellers became more complex and often involuntary and violent - including the forcible participation of Aboriginal women and children as beachcombers and shallow water pearling divers. Sickert (2003) reports that Aboriginal divers were

..... beaten and were forced to hang by their hands in the rigging all night if they refused to dive. Shark attack, drowning, fever, scurvy, blood poisoning, lung infections and extreme exertion were but some of the dangers faced by the divers. From daybreak to sundown they repeatedly went down in search of shell, and if a diver spent too long regaining his or her breath, their knuckles would be rapped with a heavy wooden stick, and they would be forced to go down again.. Under these circumstances, divers often became exhausted and miscalculated their timing. Sometimes a diver might hold their breath for too long, become unconscious, and come up to the surface as a corpse.

Green (1988) provides the following assessment of Aboriginal involvement in the pearling industry in the late 1800s, and the establishment of mission settlements as an attempt to protect Aboriginal people from some of the impacts of the pearling frontier:

¹⁵ Sickert (2003)

Pearling fleets were operating from Roebuck Bay and King Sound in the Kimberley at this time. Interactions between Aboriginal people and the European-Asian pearlers often had disastrous consequences in terms of social impact. Aboriginal people were recruited as labour on the pearling fleets. The Lacepede Islands were used as a depot where Aboriginal people were kept prior to being sold to pearlers further down the coast (Green and Turner, 1984).

By 1868 there were, according to Sholl, 60 natives and 30 whites employed on the pearling boats in the Dampier Archipelago. By 1869, Aborigines were in great demand as divers, as exemplified by R. Thatcher: "Already hands are scarce and the much despised natives eagerly sought after" (Herald 25.12.1869. The methods used to "recruit" Aborigines for pearling often turned sour and consisted of kidnapping and mistreatment, sometimes murder. Perhaps it was this attitude which led to the murder of a policeman, his assistant and two pearlers by Aborigines in 1868. The end result of this incident was that Aborigines were relentlessly persecuted and shot by the settlers. D. Carley wrote that:

It is very well known about Nickol Bay and the Flying Foam Passage, that on one day there were quite sixty natives, men, women and children shot dead. The natives showed me the skulls of 15 who were shot dead. Three of the skulls were those of children, and two of these small skulls had bullet holes in them.

The wrath inflicted upon the Aboriginal inhabitants of the Dampier Archipelago was so severe that there are no accounts of Aborigines living traditionally in the area after 1868.

The development of missions in the Kimberley was aimed at preventing similar situations from occurring. The coastal Worora people were first affected by Europeans with the attempted settlement of the Camden Harbour Pastoral settlement in 1864. In 1912 a Presbyterian mission was established at Port George IV inlet, but by 1916 the mission had shifted to Kunmunya. The principal reason for this move was to remove the Aboriginal people from what the missionaries saw as disastrous liaisons between the Aborigines and the crews of pearling luggers (Green and Turner, 1984). By 1949, with pastoral stations occupying almost all of the Aboriginal land in the north Kimberley, Worora, Wunambal and Ngarinyin people lived in two major mission settlements, Kunmunya and Munja. Some people had travelled to Kalumburu and the Forrest River Mission (Oombulgari) prior to this period. The former people moved eventually to Wotjalum and thence to Derby to be resettled at Mowanjum.

The history of the Dampierland communities is strikingly similar. These coastal dwelling people were exposed to a wide range of effects from Aboriginal-European contact. Pastoralists took control of the well-watered lands to the east, displacing the Aboriginal people who fled to the coast. Interactions between Aboriginal people and the European-Asian pearling crews often had disastrous consequences.

Father Duncan McNab arrived on the western shore of King Sound in 1885 to establish a mission at Disaster Bay. The mission was short-lived, but it introduced Aborigines to missionaries, whose aim was to protect the Aboriginal people from the exploitation of pearlers, pastoralists and miners. Missions were to have a lasting impact on the lives of the Dampierland people, with missions being established at Beagle Bay in 1890, Lombadina in 1892 and Sunday Island in 1899. When the Sunday Island mission closed in 1957 the Bardi were moved to Derby where they stayed until 1967. The time spent in Derby for the Bardi

and Djawi people of the Buccaneer Archipelago, was a time of great unhappiness. Living on a town reserve at the edge of the salt flats, many people were for the first time exposed to alcohol and boredom. The lack of fish (the previous dietary staple), the number of sandflies and mosquitoes, inadequate housing and being away from their traditional homeland, promoted their move back to Sunday Island in 1967, and then to One Arm Point in 1972.

In 1868 the Western Australian colonial Legislative Council prohibited the use of female divers, as a result of many reports of abuse. Three years later the legislative Council passed the *Pearl Shell Fisheries Act* which prohibited women from boarding pearling vessels altogether in a further attempt to prevent continuing abuse. The Act also required the white pearlers to provide their divers with rations of flour tea, sugar and tobacco, as well as two shirts, two pairs of trousers and two blankets per season.

Some Aboriginal people became and stayed involved in the pearling industry voluntarily, but the forced recruitment of Aboriginal labour, including from inland tribes, continued as the pearling industry developed. Some settlers became professional “blackbirders”, arranging for the capture of Aboriginal people, keeping them for a time in holding camps on pastoral stations and then transporting them to the pearling grounds around Broome and nearby islands. When even the forced recruitment of Aboriginal labour was insufficient to meet demand, indentured labourers from many parts of south-east Asia were recruited as divers, some of whom became boat owners and settlers. Though discrimination and abuse of Aboriginal and Asian divers continued, over time a multiracial and multicultural society grew up in an around Broome based on the pearling industry.

2.7 Aboriginal involvement in commercial marine resource use

Aboriginal people of the north-west have been and are involved in several commercial marine resource use enterprises. These include:

- A marine turtle farming project;
- Harvesting and processing of trochus shell;
- Commercial fishing;
- Charter fishing.

Marine turtle farming

A Green turtle farming project was carried out at One Arm Point during the 1970s, as part of a government funded project focussed mainly on Murray Island (*Mer*) in Torres Strait. The project aimed to develop a commercial opportunity for remote Indigenous communities and to provide a boost to turtle conservation by a process known as “headstarting”, whereby turtles are hatched from wild-caught eggs, raised in captivity for one year and then released. Headstarting aims to increase the wild population of turtles by assisting hatchlings to survive through the most hazardous first year of life. Financial gains were envisaged from the sale of stuffed and mounted hatchlings for the souvenir trade, turtle meat and turtle shell.

A review of the project commissioned by the Australian Government in 1973¹⁶ reported that three turtle farms were in operation at One Arm Point at that time. The farms consisted of children’s plastic swimming pools surrounded by galvanised iron. The young turtles were fed on mullet caught by the community in seine nets. The review found that the turtles were in

¹⁶ Carr and Main (1973)

good health, but foresaw considerable difficulties for the future of the project. The difficulties included the provision of sufficient food for the growing turtles and the construction and operation of sea pens to hold the large turtles. The project was terminated after a few years.

Trochus Shell

Trochus (*Trochus niloticus*) is a species of gastropod from which pearl shell buttons are made. The commercial trochus industry began in Western Australia during the 1890s as part of the pearling trade. Trochus was probably not an important part of the traditional diet of saltwater people as the meat was tough; the shell may have been collected but was not as significant as the bailer shell or the ritually important pearl shell.

Rouja (1998) provides the following account of the beginnings of the trochus industry at One Arm Point and its connection with the mission and settlement history of the area:

Sydney Haley, who first set up the mission on Sunday Island in 1889, had been previously involved in using Aborigines as beach combers in the Dampier Peninsula, taking some of these and shipping them out to work on luggers, a process known as 'blackbirding' (Campbell and Wilson 1993). The mission may have been initially approved to secure a European foothold in an area too remote to be controlled and frequently visited by Indonesian pearl divers and fishermen. Hadley may have been trying to legitimise his claim to the area, and secure a consistent workforce, the Aborigines at the mission apparently supplying him with products of beach-combing and hunting expeditions. These items included pearl, trochus and Hawksbill turtle shell. Whether legitimate or not, this may have been a blessing in disguise as it could be argued that the establishment of the Sunday Island mission did not result in a substantial loss of traditional culture among the Bardi at Sunday Island. They maintained a large part of their traditional ceremonies and Laws throughout the mission period, and the men at least continued their subsistence practices and distribution Laws, protected from the more unscrupulous pearl divers and traders, some of which sold Aborigines to the highest bidder. This work did not remove them from their traditional territories and, in large part, still made use of their traditional skills used in subsistence living – e.g. calculating the tides, gathering from the reef and hunting turtle. Subsistence activity was carried out alongside their work without much trouble, much as is done today, and was probably encouraged by the mission in order to supplement the meagre provisions they brought in, and the failed attempts at farming. That they were still able to support themselves while working for the mission gives us a good indication of the level of activity required by the Bardi to subsist in this environment.

A modest level of trochus harvesting continued at the Sunday Island mission until the world wide collapse of the trade in the 1950s, due to the development of plastics from which cheaper buttons were made. The Sunday Island mission closed in the early 1960s and most Bardi people were moved to Derby and elsewhere, but many subsequently moved to the new settlement of One Arm point in the late 1960s.

In the 1970s trochus was once more in demand for buttons in the high fashion industry and currently global demand for trochus exceeds supply. The Community of One Arm Point began harvesting trochus commercially in 1979; in 1983 the Community was granted an exclusive commercial trochus fishing licence for the Sunday Island Strait in King Sound, where only Bardi are allowed to exploit the resources. More recently trochus licences have also been issued to Aboriginal corporations at Lombidina and Derby.

Bardi only collect trochus from the exposed reef flats, so that the trochus in deeper water remain to replenish the population, and there are maximum and minimum allowable shell sizes. Trochus harvested on the reef flats is brought back to shore for cleaning, as described by Rouja (1998):

The shells have to be cooked alive or else the muscle or snail cannot be extracted properly. After being boiled for 20 minutes the shells are dumped out onto a piece of tin roofing flanked by two long tree trunks. Seated behind these facing the pile of shells people pick up the still hot shells holding them with the cone or point into the palm of their hand. The shells are repeatedly struck with their base against a log until the snail and its intestines are knocked out of the shell. This technique requires a great deal of practice and the children are never allowed to help. The intestine has to be removed entirely from within the shell or else within a few days they become rank and have to be thrown away. If bags of trochus shell are found to stink the entire bag is rejected. This is a painstaking job, a bag of trochus shells taking from 3 to 6 hours depending on the amount of people helping. The shells once cleaned are rinsed in clean water then packed in large burlap bags and taken to the central "trochus shed" where they are weighed and catalogued. These are locked in a separate area to be collected and shipped out at a later date.

Commercial Fishing

In Shark Bay a limited entry fishery beach seine mesh net fishery has been established to protect the interests of the largely Aboriginal fishing community at Denham, who began inshore net fishing following the decline of the pearling industry at the outbreak of World War 2. There are currently 10 licences held by the Denham commercial fishers, of which only one is held by a non-Aboriginal fisher. Commercial inshore fishing licences for Shark Bay can only be passed on through the fishing families and cannot be sold on the open market¹⁷.

Aboriginal charter fishing and marine tourism

Several Aboriginal owned charter fishing enterprises operate out of One Arm Point and Lombadina. The Yadgalah Aboriginal Corporation in Shark Bay part is part owner of the Monkey Mia tourism operation and also operates a mini-golf enterprise in the same area.

Aboriginal Fishing Strategy

In 2003 the Western Australian departments of Fisheries and Indigenous Affairs, with the support of the Aboriginal and Torres Strait Islander Commission and the Fisheries Research and Development Commission, released a Draft Aboriginal Fishing Strategy. The Strategy had its origins with the 1993 Commonwealth Resource Assessment Commission's Coastal Zone Inquiry, the final report of which included the following recommendation:

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

The key elements of the Strategy shall be as follows:

- *assessments by all fisheries authorities of Indigenous interests in fisheries for which they have responsibility. Such assessments should include a review of the nature and extent of continuing customary marine tenure and traditional fishing practices in each*

¹⁷ Smyth (1993)

fishery and how these might contribute to fisheries policy and management; impediments to Indigenous people's participation in commercial fishing; and the impact of commercial fishing on fishing for traditional purposes;

- *representation of Indigenous people on advisory committees for all major fisheries (as recommended by the Ecologically Sustainable Development Working Group on Fisheries) and identification of means by which Indigenous communities can participate in the management of local fisheries and marine environments in which they have a traditional interest;*
- *measures to improve economic development and employment opportunities for Indigenous communities in fisheries and mariculture ventures. Options include the reservation of a proportion of fishing or other licences for Indigenous communities, the purchase of such licences on behalf of Indigenous communities by the Aboriginal and Torres Strait Islander Commission, and the establishment of fishing zones adjacent to land owned or controlled by Indigenous people in which communities could operate their own commercial enterprises, participate in joint ventures, or license access by other marine resource users;*
- *measures to improve relations between Indigenous communities, fisheries agency staff and commercial fishers, including cross-cultural awareness programs for agency staff and the organisation of local and regional workshops to discuss issues of mutual interest and concern.*

In 1997 a working group established by the Ministerial Council for Forestry, Fisheries and Aquaculture allocated \$400,000 to states and territories to develop Aboriginal fishing initiatives consistent with the above recommendation. This work provided a catalyst for the reform of fisheries legislation and policies to provide greater recognition of Indigenous fishing in each jurisdiction. Though only one state (New South Wales) has so far produced a formal Indigenous Fishing Strategy, the flow-on from the Coastal Zone Inquiry recommendation and the subsequent establishment of the National Indigenous Fishing Technical Working Group by the National Native Title tribunal in 2003, has led to the formal recognition of the customary Indigenous fisheries sector, to a greater or lesser extent, in all states and territories.

The National Indigenous Fishing Technical Working Group, comprising representatives from Indigenous bodies, including Native Title Representative Bodies and Aboriginal and Torres Strait Islander Commission (ATSIC), State and Northern Territory governments and the Australian Government, national commercial fisheries interests, and national recreational fisheries interests agreed on the following principles to the guide recognition of, and support for, Indigenous fisheries in all jurisdictions:

1. Indigenous people were the first custodians of Australia's marine and freshwater environments: Australia's fisheries and aquatic environment management strategies should respect and accommodate this.
2. Customary fishing is to be defined and incorporated by Governments into fisheries management regimes, so as to afford it protection.
3. Customary fishing is fishing in accordance with relevant Indigenous laws and customs for the purpose of satisfying personal, domestic or non-commercial communal needs. Specific frameworks for customary fishing may vary throughout Australia by reference,

for example, to marine zones, fish species, Indigenous community locations and traditions or their access to land and water.

4. Recognition of customary fishing will translate, wherever possible, into a share in the overall allocation of sustainable managed fisheries.
5. In the allocation of marine and freshwater resources, the customary sector should be recognised as a sector in its own right, alongside recreational and commercial sectors, ideally within the context of future integrated fisheries management strategies.
6. Governments and other stakeholders will work together to, at minimum, implement assistance strategies to increase Indigenous participation in fisheries-related businesses, including the recreational and charter sectors.
7. Increased Indigenous participation in fisheries related businesses and fisheries management, together with related vocational development, must be expedited.

The Draft Aboriginal Fishing Strategy seeks to implement these principles in Western Australia and contains 39 recommendations for the reform of fisheries management in the state. Key elements of the strategy are:

- Recognition of Aboriginal Customary Fishing as a legitimate fisheries sector for the purposes of fisheries allocation, management and policy support;
- Formal Aboriginal involvement in fisheries management, through the establishment of a state-wide Customary Fishing Advisory Committee;
- Appointment and resourcing of an independent advocate/representative of customary fishing interests; and
- Support for greater Aboriginal involvement in commercial fishing industries.

These recommendations have yet to be formally endorsed by the Government of Western Australia, so the Strategy remains a draft document. However, amendments have been made to the Western Australian *Fisheries Act* to provide for the Indigenous fishing sector to receive allocations when quotas are developed for each fishery. Under the Strategy, support will continue for the exclusive Indigenous commercial trochus fishery at One Arm Point and elsewhere in that region.

The Strategy recommends that Aboriginal customary fishing should:

- Apply to persons of Aboriginal descent who are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial needs;
- Encompass the elements of barter or exchange of fish as long as it occurs within or between Aboriginal communities;
- Not be limited to 'traditional' fishing gear, species or methods, subject to ensuring sustainable fishing practices;
- Be recognised as a positive and existing right, and not a right to be conditionally granted.

The Draft Strategy sets out options for regulating customary fishing, including through the use of possession limits¹⁸, to ensure sustainability, as well as options to promote further commercial

¹⁸ Concern has been expressed (Tom Vigilante, pers com) about the setting of possession limits by the Fisheries Department, rather than the recognition of Indigenous peoples' right to manage their own resources.

engagement in commercial fishing enterprises (including joint ventures). The 39 recommendations of the Draft Strategy are reproduced in full in Attachment 1.

Oil and Gas

Oil and gas explorations and developments off the Kimberley coast present new opportunities for Aboriginal people to benefit from the resources of their sea country, while also potentially posing threats to their offshore and onshore environments. The Kimberley Land Council (KLC) has negotiated agreements with exploration companies to ensure that appropriate negotiations take place with Traditional Owners affected by developments on land and sea¹⁹. The KLC has supported Traditional Owners who have opposed processing plants on their land²⁰ and has criticised companies who failed to follow appropriate consultation protocols²¹.

3. Native Title on Sea Country in the North West

3.1 Overview of native title on Sea Country

The following overview of the recognition and implications of native title on Sea Country is adapted from Strelein (2002) and Smyth (2004), with additional information and perspectives as referenced.

The first assertion of native title in the sea in Australia occurred in 1982 around the Murray Islands in. Though this resulted in the landmark Mabo High Court decision ten years later, the marine component of the claim was dropped (for various legal and procedural reasons) prior to the case reaching final determination (Sharp 1996). Nevertheless, the *Native Title Act 1993* (Clth) provided for the possibility of native title in the sea, provided Aboriginal people could demonstrate its existence in local customary law, and provided it had not been extinguished by some explicit act of government.

Native title is a significantly different form of legal recognition of Indigenous rights to country than is provided for in statutory land rights legislation, such as from statutory recognition in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Clth) or the *Aboriginal Land Act 1991* (Qld). Native title on land or sea is the recognition of pre-existing Indigenous customary laws regarding ownership and management of country, whereas the statutory land rights legislation deals with the granting of land (sometimes including intertidal land) by governments to Indigenous people on the basis of their cultural and economic relationship with the land, and on the assumption that any previous customary legal rights to the land had been extinguished by the act of colonisation. In Western Australia, native title is the only legal mechanism for Indigenous people to claim ownership of their traditional Country as there is no land rights legislation in that state.

During the decade following the Mabo High Court decision in 1992, there was considerable speculation as to how the principles laid out in this decision could be extended to the sea (for example, Allen (1993), Bartlett (1993), Smyth (1993 & 1994), Sutherland (1996), Finlayson & Smith (1995), Kilduff & Löfgren (1996), Meyers et al. (1996), McIntyre (1993), Pannell (1998), Sparkes (1998), Sharp (1998 & 2002), Glaskin (2000) and Keon-Cohen (2001)). Since the first marine native title High Court decision in 2001 (*Commonwealth v. Yarmirr and Yarmirr v. Northern Territory*, also known as the Croker Island case), there has been somewhat more certainty

¹⁹ <http://www.abc.net.au/news/stories/2007/06/18/1953958.htm>

²⁰ http://www.klc.org.au/newsltr/nwsltr3_05_woodside.pdf

²¹ http://origin.abc.net.au/message/news/stories/ms_news_1843986.htm

about the possible extent of recognition of customary Aboriginal rights and interests in the sea through the native title process, though some issues remain to be explored and determined in future High Court decisions.

The first determination of native title over Sea Country involved a claim for full, exclusive recognition of native title to sea and seabed asserted by the members of four clans whose traditional land on Croker and nearby islands off the western Arnhem Land coast had already been granted through the *Aboriginal Land Rights (Northern Territory) Act*. In 1998 Justice Olney of the Federal Court determined that native title did continue to exist in the sea, but that it was a non-exclusive right. The decision was appealed (by the claimants and by the Commonwealth and Northern Territory governments) to the Full Bench of the Federal Court, which confirmed the original decision in 1999. The case was then appealed to the High Court, which, in a majority decision, made a final determination in 2001, again confirming the original Federal Court decision.

The main elements of the High Court decision in relation to the seas around Croker Island are that native title:

- is confirmed to exist in the sea;
- has been regulated by government acts, but not extinguished;
- is not exclusive because:
 - ~ it has not been established as exclusive under customary law; and
 - ~ it is contrary to the public access, fishing and navigation rights under common law;
- does not include mineral rights because:
 - ~ such rights have not been established under customary law, and
 - ~ legislation relating to the ownership of minerals would have extinguished such rights had they existed;
- includes the rights to:
 - ~ fish, hunt and gather;
 - ~ access the sea and sea bed;
 - ~ travel through and within the claim area; and
 - ~ visit and protect places of cultural and spiritual importance~ safeguard cultural and spiritual knowledge; and
- that Aboriginal rights must yield to other rights and interests under Northern Territory or Commonwealth legislation.

Several subsequent native title determinations over Sea Country have been consistent with the above elements of the Croker Island decision. Key aspects of the recognition of native title on Sea Country with respect to the development and implementation of marine bioregional marine plans are:

- Native title exists in the sea;
- The rights and interests of native title holders are distinct and different from those of the general Australian community; and
- Native title rights must co-exist (and if necessary yield to) rights held by others in the sea (e.g. commercial fishing, navigational rights etc.).

Despite the legal clarification achieved by the Croker Island and other native title determinations, some uncertainties remain about native title on Sea Country. These include:

- whether native title can extend beyond 12 nautical miles into Australia's 200 nautical mile

Exclusive Economic Zone;

- whether native title may include a non-exclusive right to trade in marine resources;
- the extent to which the right to protect places of cultural significance (recognised by the majority decision in the Croker Island case) can be used to exclude people from such places, given the overall non-exclusive nature of marine native title;
- the extent to which marine native title implies a right to be involved in decision-making about marine resource and environment management.

A recent native title determination over Blue Mud Bay on the Northern Territory coast of the Gulf of Carpentaria has found that Traditional Owners have exclusive control over inter-tidal waters. However, this finding applies only to the Northern Territory, where ownership of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Clth) extends to the low water mark. This determination by the Federal Court is currently being appealed by both the Northern Territory and Australian governments.

3.2 *Native Title Claims and Determinations in the North West Marine Region*

There are over 20 registered, partially registered or determined native title claims over Sea Country in the North West Marine Region²². This section provides a summary of each of these claims and determinations with respect to the geographic areas, the people and the rights and interests asserted and/or determined. The native title claim/determination areas for the whole of Western Australia are shown in Figure 3. Larger scale maps of claim/determination areas for the Geraldton, Pilbara and Kimberley regions are shown in Figure 4, 5 and 6 respectively.

The claims all recognise that where other legal rights and interests apply, including rights of the Crown, only non-exclusive native title rights can be determined. However, the actual suite of native title rights claimed varies to some degree from claim to claim, and so a summary of claimed rights is provided for each claim below.

Information provided in this Section on native title rights and interests claimed or determined should be regarded as a summary guide only, and should not be used for any legal or management purposes. Requests for comprehensive information on native title claims and determinations should be referred to the National Native Title Tribunal²³.

²² www.nntt.gov.au

²³ www.nntt.gov.au

SEA COUNTRIES OF THE NORTH-WEST

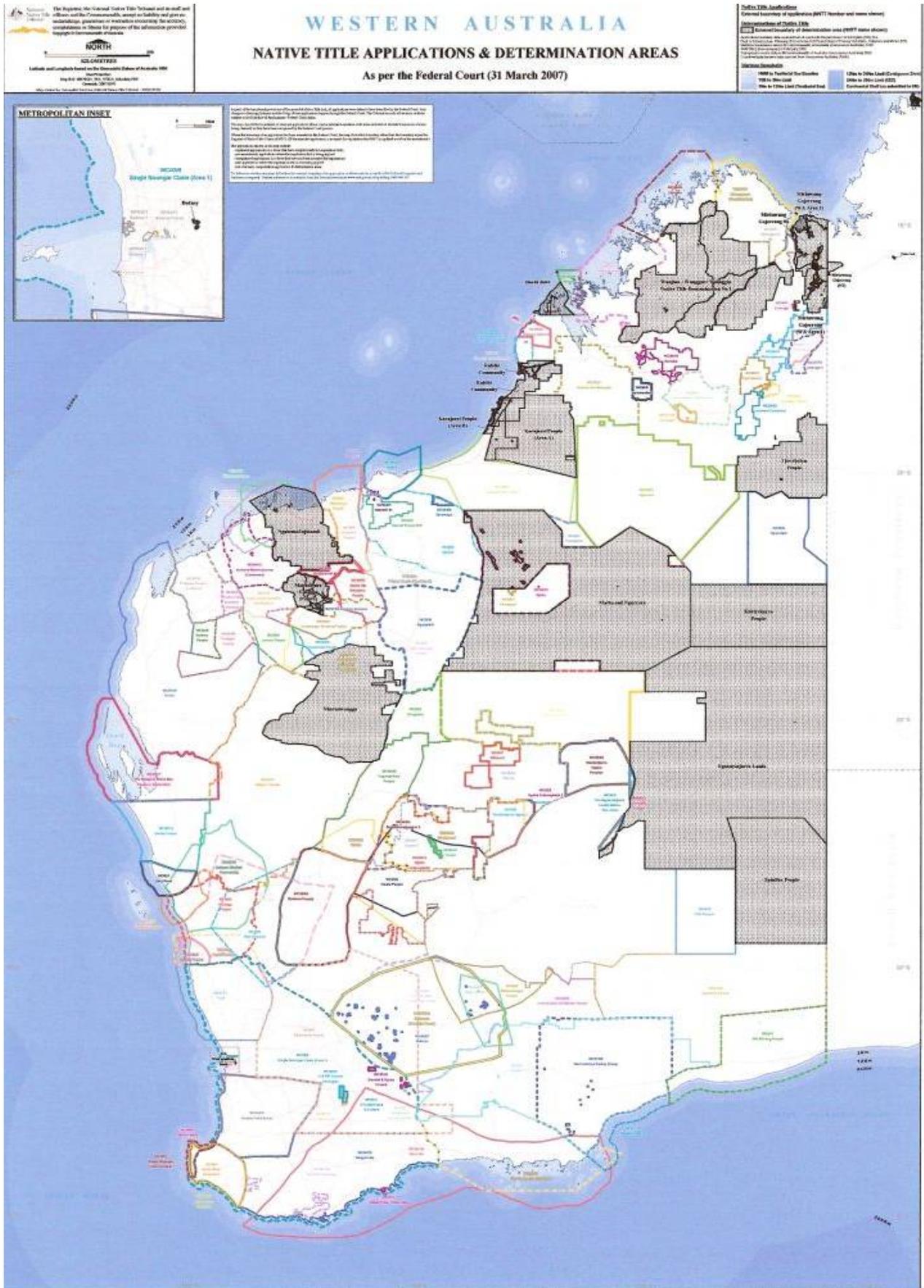


Figure 3: Native title claims and determinations in Western Australia

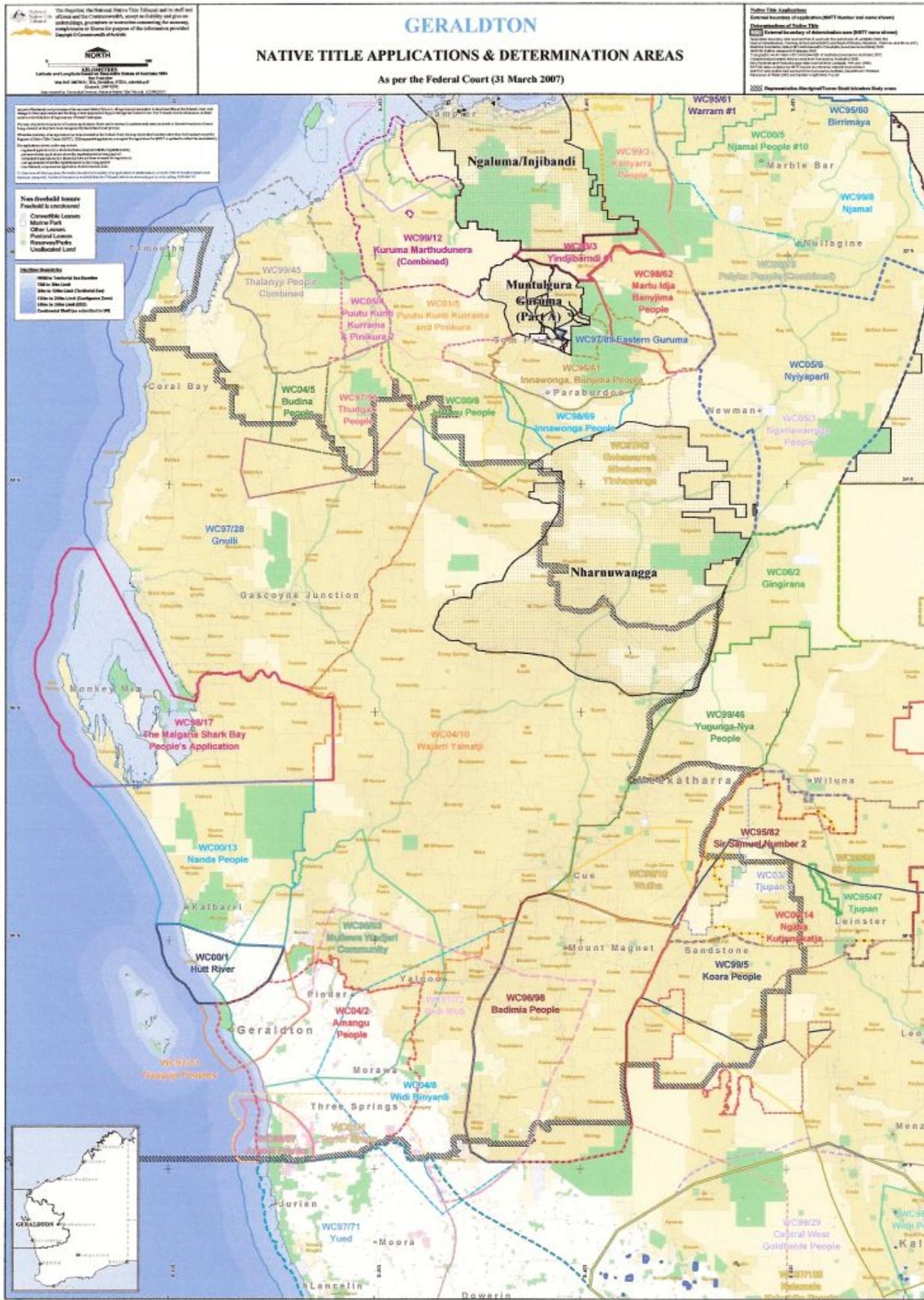


Figure 4: Native title claims in the Geraldton region



Figure 5: Native title claims and determinations in the Pilbara region

Nanda People

The Nanda People's claim area comprises 23,110.012 sq. kms of land and sea between just south of Kalbarri northwards to Shark Bay and up to 150 km inland. The marine component of the claim extends 12 nautical miles from the coast and therefore ***does include*** Commonwealth waters at the southern end of the North West Marine Region. The claim is currently in mediation.

The Nanda People's claim asserts the following native title rights and interests:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Malgana Shark Bay People

Malgana Shark Bay People's claim area comprises 36,071 sq kms of land and sea encompassing almost all of Shark Bay and associated islands and peninsulas. The marine component of the claim extends 12 nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Malgana Shark Bay People's claim asserts the following native title rights and interests:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Gnulli

The Gnulli claim area comprises 87,876 sq km of land and sea immediately to the north of Shark Bay extending northwards to and including North West cape and Exmouth Gulf. The marine component of the claim extends 12 nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Gnulli claim asserts the following native title rights and interests:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Thalanyi

The Thalanyi claim area comprises 18,432 sq km of land and sea immediately to the north of Exmouth Gulf. The marine component of the claim extends only to the state baseline boundary and therefore ***does not include*** Commonwealth waters within the North West Marine Region.

The Thalanyi claim asserts the following native title rights and interests:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Kuruma Marthudunera

The Kuruma Marthudunera claim area comprises 15,759 sq km of land and sea north of the Thalamyi claim area to Cape Preston. The marine component of the claim extends only to three nautical miles from the coast and therefore ***does not include*** Commonwealth waters within the North West Marine Region.

The Kuruma Marthudunera claim asserts the right to the possession, occupation, use and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Yaburara and Mardudhuner People

The Yaburara and Mardudhuner People's claim area covers 13,940 sq km of land and sea to the south and north of Dampier, but not including the Dampier Peninsula. The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region. The Yaburara and Mardudhuner People's claim overlaps with the Kuruma Marthudunera claim area to the south and the Wong-goo-tt-oo claim to the north.

The Yaburara and Mardudhuner People's claim asserts:

- The rights and interests to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resources taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Wong-goo-tt-oo

The Wong-goo-tt-oo claim area covers 20,241 sq. km of land and sea to the south and north of Dampier, but not including the Dampier Peninsula. The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region. The Wong-goo-tt-oo claim area overlaps with both the Yaburara and Mardudhuner People's claim area and the Kuruma Marthudunera claim area.

The Wong-goo-tt-oo claim asserts:

- Rights to possess, use, occupy and enjoy the area.
- The right to make decisions about the use and enjoyment of the area.
- The right to access to the area.
- The right to control the access of others to the area.
- The right to use and enjoy resources of the area, subject to the exclusion of Schedule P & Q.
- The right to control the use and enjoyment of others of resources of the area, subject to the exclusion of Schedule P & Q.
- The right to trade in resources of the area, subject to the exclusion of Schedule P & Q.
- The right to receive a portion of any resources taken by others from the area, subject to the exclusion of Schedule P & Q.
- The right to protect places of importance under traditional laws, practices and customs in the area.
- The right to protect and prevent the misuse of cultural knowledge by the common law holders associated with the area.
- The right to hold meetings and traditional ceremonies on the land for the sustenance and well being of the community.
- The right to manage and protect the sacred sites and spirituality of the land, to camp, hunt, fish, gather bush tucker, medicines and building materials according to the laws and customs of the aboriginal community.
- The right to gather materials to make tools, weapons, and utensils to perform our traditional ceremonies.
- The right to maintain and care for water resources (particularly springs) in significant areas of the land.
- The right to manage and protect the sacred sites and spirituality of the land according to the laws and customs of the aboriginal community.

Ngaluma/Injibandi

The Ngaluma/Injibandi native title determination found that native title does not exist on the Burrup Peninsula, in offshore waters, on Dupuch Island and in the Hamersley ranges area. However, the following non-exclusive native title rights was found to exist in other part of the claim area.

- A right to access (including to enter, to travel over and remain);
- A right to engage in ritual and ceremony (including to carry out and participate in initiation practices);
- A right to camp and to build shelters (including boughsheds, mias and humpies), limited to the proximity of river courses within the Ngarluma Native Title Area, and to live temporarily thereon as part of camping or for the purpose of building a shelter;
- A right to fish from the waters, limited to the coastal areas landward of the low water mark, and inland water courses;
- A right to collect and forage for bush medicine;
- A right to hunt and forage for and take fauna (including fish, shell fish, crab, oysters, sea turtle, dugong, goanna, kangaroo, emu, bush turkey, echidna, porcupine, witchetty grub, swan), limited in the case of water fauna to coastal waters landward of the low water mark and inland water courses;
- A right to forage for and take flora (including timber logs, branches, bark and leaves, gum, wax, Aboriginal tobacco, fruit, peas, pods, melons, bush cucumber, seeds, nuts, grasses, potatoes, wild onion and honey);
- A right to take black, yellow, white and red ochre;
- A right to take water for drinking and domestic use;
- A right to cook on the land including light a fire for this purpose, limited to the proximity of river courses;
- A right to protect and care for sites and objects of significance in the Ngarluma Native Title Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others so as to perpetuate the benefits of the area and warn against behaviour which may result in harm, but not including a right to control access or use of the land by others).
- A right to access (including to enter, to travel over and remain);
- A right to engage in ritual and ceremony (including to carry out and participate in initiation practices);
- A right to camp and to build shelters (including boughsheds, mias and humpies), limited to the Millstream-Fortescue Area, and to live temporarily thereon as part of camping or for the purpose of building a shelter;
- A right to fish from the waters, limited to the Millstream-Fortescue Area;
- A right to collect and forage for bush medicine, limited to the Millstream-Fortescue Area and the upper reaches of the Sherlock River;
- A right to hunt and forage for and take fauna (including fish, shell fish, crab, oysters, goanna, kangaroo, emu, turkey, echidna, porcupine, witchetty grub and swan but not including dugong or sea turtle), limited to the Millstream-Fortescue Area and the upper reaches of the Sherlock River;
- A right to forage for and take flora (including timber logs, branches, bark and leaves, gum, wax, Aboriginal tobacco, fruit, peas, pods, melons, bush cucumber, seeds, nuts, grasses,

potatoes, wild onion and honey), limited to the Millstream-Fortescue Area and the upper reaches of the Sherlock River;

- A right to take black, yellow, white and red ochre, limited to the Millstream-Fortescue Area;
 - A right to take water for drinking and domestic use;
 - A right to cook on the land including light a fire for this purpose, limited to the Millstream-Fortescue Area;
 - A right to protect and care for sites and objects of significance in the Yindjibarndi Native Title Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others so as to perpetuate the benefits of the area and warn against behaviour which may result in harm, but not including a right to control access or use of the land by others);
 - Limited non-exclusive native title rights and interests in relation to the 'Inter-tidal Zone'
 - Limited non-exclusive native title rights and interests in relation to the 'Offshore Islands'
10. The non-exclusive native title rights and interests in relation to the 'Cemetery Reserve Area do not include the right to engage in ritual and ceremony save to the extent it relates to ritual and ceremony for the dead.

Kariyara People

The Kariyara People's claim area covers 17,052 sq. km of land and sea in the vicinity of Port Hedland. The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Kariyara People's claim asserts:

- The right to ingress and exit, occupy, possess, use, enjoy and live upon the land of their ancestors upholding custom and Aboriginal law;
- The right to manage and maintain the fauna and flora together with the land and waters according to traditions and complying with Aboriginal law and culture which has been passed down from generation to generation to sustain existence and the environment upon their traditional lands;
- The right to forage for food, medicine and for such other items used for customary practices including fauna and flora on or under the land and waters, and the right to protect them from degradation;
- The right to participate at meetings for social and cultural gatherings within the group or with other groups to enforce customary laws and practices and hold traditional ceremonies, arrange marriages organise ceremonies, mediate and carry out punishments, barter for food, tools, materials, equipment, utensils, access to water, hunting and burial grounds on the land;
- The right to lay away the dead upon their land and the right to bring the dead of the claim group for traditional ceremonies;
- The right to camp, hunt, fish, gather traditional foods, and building materials, utensils, tools, equipment and weapons;
- The right to use, manage, maintain and care for the water resources on the land;
- The right to extract and collect flints, clays, salts, soils, sand gravel, stones, ochres and such other substances in, on or under the land for use or trade as it was done by their

ancestors in title;

- The right to use such resources and materials (animate and inanimate) growing, living and occurring in on or under the land and waters together with the right to receive a portion of any such resources taken by others, as it was done by their ancestors in title, for use or barter;
- The right to manage and protect their sites, their secret societies and lodges or fraternities to ensure that rituals of religious significance, mystery and solemnity relating to the Dreamtime can continue which gives authority to the survival instruction or activities that have evolved over centuries and will allow for the gathering of people to come together to carry out ceremonies and activities required under customary law and culture;
- The right to freely move upon their land to teach their young about their country, culture and traditions, how to look after the fauna and flora for both sustenance and to protect the land, waters, the environment and the natural habitat;
- The right to construct camps, dwellings and other structures.

Binburnna People

The Binburnna People's claim covers the same area of land and sea as for the Kariyara People's claim (see above). The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Binburnna People's claim asserts:

- The rights to speak for and make decisions about the use of and enjoyment of the lands and waters by themselves and others.
- The right to live on the land.
- The right to access, move about and use the land.
- The right to hunt and gather on the land and waters.
- The right to engage in spiritual and cultural activities on the land and waters.
- The right access, use and take any resources of the land and waters and control the access of others to the land waters and their resources.
- The right to refuse, regulate and control the use and enjoyment of others of the land and waters and their resources.
- The right to care for, maintain and protect the lands and waters, including places spiritual and cultural significance.
- The right to access and use the water of the land.
- Except to the extent that any of the above rights have been extinguished.

Ngarla #2

The Ngarla #2 claim covers a relatively small area of land and sea just to the east of Port Hedland. The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Ngarla #2 claim asserts over three areas (A, B and C):

The native title rights and interests in relation to Area A comprise:

1. The right to possess, occupy, use and enjoy the area as against the world;
2. A right to occupy the area;
3. A right to use the area;
4. A right to enjoy the area;
5. A right to be present on or within the area;
6. A right to hunt in the area;
7. A right to fish in the area;
8. A right to make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;
9. A right to make decisions about the use of the area by persons who are not members of the Aboriginal society to which the native title claim group belong;
10. A right to invite and permit others to have access to and participate in or carry out activities in the area;
11. A right of access to the area;
12. A right to live within the area;
13. A right to erect shelters upon or within the area;
14. A right to camp upon or within the area;
15. A right to move about the area;
16. A right to engage in cultural activities within the area;
17. A right to conduct and participate in ceremonies and meetings within the area;
18. A right to control access of others to the area;
19. A right to control access of others to the area except such person as may be exercising a right accorded by the common law, statute law of the Commonwealth or the State of Western Australia or a lawful grant by the British sovereign or its successor;
20. A right to visit, care for and maintain places of importance and protect them from physical harm;
21. A right to take traditional resources, other than minerals and petroleum from the area;
22. A right to take fauna;
23. A right to take flora (including timber);
24. A right to take soil;
25. A right to take sand;
26. A right to take stone and/or flint;
27. A right to take clay;
28. A right to take gravel;
29. A right to take ochre;
30. A right to take water;
31. A right to manufacture traditional items from the resources of the area;
32. A right to trade in the resources of the area;
33. A right to control the taking, use and enjoyment by others of the resources of the area;
34. A right to maintain, conserve and protect significant places and objects located within the

area;

35. A right to enjoy all the features, benefits and advantages inherent in the environment of the area;
36. A right to be identified and acknowledged, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the holders of native title rights in relation to the land and waters of the area.

Ngarla

The Ngarla claim covers 10,806 sq kms of land and sea northeast of Port Hedland, in the vicinity of Breaker Inlet. The marine component of the claim to the north of Dampier extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Ngarla claim asserts:

- The rights to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resource taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Karajarri People (determined)

With respect to the land area claimed, the following native title rights were determined to exist:

- The right to enter and remain on the land and waters;
- The right to camp and erect temporary shelters;
- The right to take fauna and flora from the land and waters;
- The right to take other natural resources of the land such as ochre, stones, soils, wood and resin;
- The right to take the waters including flowing and subterranean waters;
- The right to engage in ritual and ceremony; and
- The right to care for, maintain and protect from physical harm, particular sites and area of significance to the Karajarri People.

With respect to the area of the land and waters between the mean high water mark and the lowest astronomical tide, and any other tidal waters, non-exclusive rights to use and enjoy the land and waters are as follows:

- The right of access to the land and waters;

- The right to take fauna, flora, fish and other traditional resources.
- The right to take the waters including flowing and subterranean waters;
- The right to engage in ritual and ceremony; and
- The right to care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri People.

Rubibi Community (determined)

Through several native title determinations, the Yawuru People have been recognised as native title holders of approximately 4,900 sq kms of their traditional country in and around Broome, including an area of intertidal land in Roebuck Bay. Neither the claim area or the determination extended beyond three nautical miles from the coast and so ***does not include*** Commonwealth waters.

Non-exclusive native title rights determined to exist in the intertidal are include:

- the right to access, move about in and on and use the land and waters;
- the right to hunt and gather in and on the land and waters, including for dugong and turtle for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes);
- the right to access, use and take any of the resources of the land and waters (including the fresh water) for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes); and
- the right to maintain and protect the land and waters, including its places of spiritual significance.

Goolarabooloo – Jabirr Jabirr Peoples

The Goolarabooloo – Jabirr Jabirr Peoples’ claim covers 2,322 sq. km immediately north of Broome. The marine component of the claim does not extend beyond three nautical miles from the coast and therefore ***does not include*** Commonwealth waters within the North West Marine Region.

The Goolarabooloo – Jabirr Jabirr Peoples’ claim asserts:

- The rights to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resource taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Djabera Djabera

The Djabera Djabera claim covers 2,799 sq km of land and sea in the vicinity of Beagle Bay, and includes the nearby Lacepede Islands. The marine component of the claim does not extend beyond three nautical miles from the coast and therefore ***does not include*** Commonwealth waters within the North West Marine Region.

The Djabera Djabera claim asserts:

- The rights to possess, occupy, use and enjoy the area;
- The right to make decisions about the use and enjoyment of the area;
- The right of access to the area;
- The right to control the access of others to the area;
- The right to use and enjoy resources of the area;
- The right to control the use and enjoyment of others of resources of the area;
- The right to trade in resources of the area;
- The right to receive a portion of any resource taken by others from the area;
- The right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

17 Bardi Jawa (determined)

The following native title rights have been determined to exist for the Bardi Jawi claim area:

- the right to live on the land;
- the right to access, move about on and use the land and waters;
- the right to hunt and gather on the land and waters;
- the right to engage in spiritual and cultural activities on the land and waters;
- the right to access, use and take any of the resources of the land and waters (including ochre) for food, shelter, medicine, fishing and trapping fish, weapons for hunting, cultural, religious, spiritual, ceremonial, artistic and communal purposes;
- the right to refuse, regulate and control the use and enjoyment by others of the land and its resources;
- the right to have access to and use the water of the land for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes.

Non-exclusive native title rights in the intertidal zone are:

- the right to access, move about in and on and use and enjoy those areas;
- the right to hunt and gather including for dugong and turtle;
- the right to access, use and take any of the resources thereof (including water and ochre) for food, trapping fish, religious, spiritual, ceremonial and communal purposes;

Provided that, in respect of areas within that defined in Schedule 4 which are seaward of the mean low water mark, the preceding native title rights and interests are limited to reefs and islets within that area when they are exposed or covered by not more than 2 metres of water.

Mayala

The Mayala claim covers 3,815 sq kms of the Buccaneer Archipelago and surrounding seas at the entrance to King Sound. The marine component of the claim does extend beyond three nautical miles from the coast and therefore **does include** Commonwealth waters within the North West Marine Region.

The Mayala claim asserts:

(1) In relation to the:

- (a) UCL where no prior inconsistent grants;
- (b) UCL where prior inconsistent grants to which s47B applies;
- (c) Crown land subject to lease or reservation for aboriginal people to which s47A applies

the native title rights and interests of the Mayala people claimed are the rights of possession, occupation, use and enjoyment of the land and waters as against the whole world including, without derogating from this general right, the following rights:

- (a) the right to hunt and fish together and use the resources of the land such as food and medicinal plants and trees, timber, charcoal, ochre and stone and to have access to and use of water on or in the land;
 - (b) the right to live on the land, to camp, erect shelters and other structures, and to travel over and visit any part of the land and waters;
 - (c) the right to engage in cultural activities on the land, to conduct ceremonies and hold meetings, to teach the physical and spiritual attributes of places and areas of importance on or in the land and waters and to participate in cultural practices relating to birth and death, including burial rights;
 - (d) the right to have access to, maintain and protect places and areas of importance on or in the land and waters, including rock art, engraving sites and stone arrangements;
 - (e) the right to make decisions about access to the land and waters by people other than those exercising a right conferred by or arising under a law of Western Australia or the Commonwealth in relation to the use of the land and waters;
 - (f) the right to make decisions about the use and enjoyment of the land and waters and the subsistence and other traditional resources thereof, by people other than those exercising a right conferred by or arising under a law of Western Australia or the Commonwealth in relation to the use of the land and waters;
 - (g) the right to share, exchange or trade subsistence and other traditional resources obtained on or from the land and waters;
 - (h) the right to control the disclosure (otherwise than in accordance with traditional laws and customs) of spiritual beliefs or practices, or of the paraphernalia associated with them (including songs, narratives, ceremonies, rituals and sacred objects) which relate to any part of or place on the land or waters;
 - (i) the right to determine and regulate the membership of and recruitment to a landholding group;
- (2) Where a claim to exclusive possession cannot be made in relation to land and onshore waters, not including land in the intertidal zone, the following native title rights and interests are claimed:
- (a) the right to hunt and fish together and use the resources of the land such as food and

medicinal plants and trees, timber, charcoal, ochre and stone and to have access to and use of water on or in the land;

- (b) the right to camp, erect shelters and other structures, and to travel over and visit any part of the land and waters;
 - (c) the right to engage in cultural activities on the land, to conduct ceremonies and hold meetings, to teach the physical and spiritual attributes of places and areas of importance on or in the land and waters and to participate in cultural practices relating to birth and death, including burial rights;
 - (d) the right to have access to, maintain and protect places and areas of importance on or in the land and waters, including rock art, engraving sites and stone arrangements;
 - (e) the right to share, exchange or trade subsistence and other traditional resources obtained on or from the land and waters;
 - (f) the right to control the disclosure (otherwise than in accordance with traditional laws and customs) of spiritual beliefs or practices, or of the paraphernalia associated with them (including songs, narratives, ceremonies, rituals and sacred objects) which relate to any part of or place on the land or waters;
 - (g) the right to determine and regulate the membership of and recruitment to a landholding group.
- (3) Where a claim to exclusive possession cannot be made in relation to:
- (a) waters, shoals and reefs seaward of the high water mark not beyond 12 nautical miles; and
 - (b) land in the inter tidal zone;
- the following native title rights and interests claimed are:
- (i) the right to access, move about in and on and use and enjoy the sea;
 - (ii) the right to hunt and gather in and on the sea, including for dugong and turtle;
 - (iii) the right to access, use and take any of the resources thereof (including the water of the inter tidal zone) for food, trapping fish, religious, spiritual, cultural, social, ceremonial and communal purposes and to manufacture any object or thing from those resources;
 - (iv) the right to care for, maintain and protect the sea, including its places of spiritual or cultural significance.

Dambimangari

The Dambimangari claim covers 27,937 sq. kms of land and sea from the Buccaneer Archipelago to the Coronation islands and including Doubtful bay and Collier Bay. The marine component of the claim does not extend beyond three nautical miles from the coast and therefore ***does not include*** Commonwealth waters within the North West Marine Region.

The Dambimangari claim asserts:

- (a) rights and interests to possess, occupy, use and enjoy the area;
- (b) the right to make decisions about the use and enjoyment of the area;
- (c) the right of access to the area;
- (d) the right to control the access of others to the area;
- (e) the right to use and enjoy resources of the area;

- (f) the right to control the use and enjoyment of others of resources of the area;
- (g) the right to trade in resources of the area
- (h) the right to receive a portion of any resources taken by others from the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- (j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Uunguu

The Uunguu claim covers about 30,000 sq kms of land and sea from Brunswick Bay to Kalumburu. The marine component of the claim extends beyond three nautical miles from the coast and therefore ***does include*** Commonwealth waters within the North West Marine Region.

The Uunguu claim asserts:

- (a) Over those areas where section 47, 47A and 47B is relied on, or where there has been no act that extinguishes native title, or where, by operation of the Native Title Act or the common law native title has not been extinguished, the right to the possession, occupation, use and enjoyment to the exclusion of all others (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:
 - (i) the right to possess, occupy, use and enjoy the area;
 - (ii) the right to make decisions about the use and enjoyment of the area;
 - (iii) the right of access to the area;
 - (iv) the right to control the access of others to the area;
 - (v) the right to use and enjoy resources of the area;
 - (vi) the right to control the use and enjoyment of others of resources of the area;
 - (vii) the right to trade in resources of the area;
 - (viii) the right to receive a portion of the benefit of any resources taken by others from the area;
 - (ix) the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
 - (x) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.
- (b) Over the remaining areas the right to the possession, use, occupation, enjoyment of the area, and in particular comprise:
 - (i) the right to possess, occupy, use and enjoy the area;
 - (ii) the right to make decisions about the use and enjoyment of the area;
 - (iii) a right of access to the area;
 - (iv) a right to use and enjoy the traditional resources of the area;
 - (v) a right to maintain and protect places of importance under traditional laws, customs and practices in the area.

Balanggarra (Combination)

The Balanggarra (Combination) claim covers about 30,000 sq. kms of land and sea from Kalumburu eastwards to the Cambridge Gulf. The marine component of the claim does not extend beyond three nautical miles from the coast and therefore **does not include** Commonwealth waters within the North West Marine Region.

The Balanggarra (Combination) claim asserts:

1. Subject to (2), (3) and (4) the native title claimed in relation to any onshore place is the right to possess, occupy, use and enjoy the area to the exclusion of all others (subject to any native title rights and interests which may be shared with any others who establish that they are also native title holders)
2. Subject to (3) and (4), in relation to any part of the area covered by the application that is either an offshore place or an area where native title rights and interests claimed in (1) are not recognised by the common law of Australia, the native title rights and interests claimed are the non-exclusive rights to use and enjoy the land and waters in accordance with traditional laws and customs as follows.
 - (a) the right of access to the lands and waters;
 - (b) the right to hunt and fish;
 - (c) the right to take the native flora and fauna of the area;
 - (d) the right to take the natural resources of the land such as wood, soil, ochre, stones and resin;
 - (e) the right to take waters, including the flowing and subterranean waters of the area;
 - (f) the rights to:
 - (i) live on the land and waters;
 - (ii) camp on the land and waters;
 - (iii) erect shelters and other structures on the land and waters; and
 - (iv) travel over and visit any part of the land and waters;
 - (g) the right to engage in cultural activities on the lands and waters, including to conduct ceremonies, to hold meetings and to participate in cultural practices relating to birth and death;
 - (h) the right to teach the physical and spiritual attributes of locations and sites in the area;
 - (i) the right to have access to, care for, maintain and protect sites and areas that are significance under the traditional laws and customs and practices in the area;
 - (j) the right to speak for and make non-exclusive decisions about the area; and
 - (k) the right to control access to and use of the land and waters by other Aboriginal People and Torres Strait Islanders who seek access to or use of the land and waters in accordance with traditional laws and customs.
3. The native title rights and interests claimed in this application are subject to and exercisable in accordance with;
 - (a) the common law, the laws of the State of Western Australia and the Commonwealth of Australia; and
 - (b) valid rights and interests, conferred or arising under those laws; and
 - (c) the body of traditional laws and customs of the Aboriginal society under which rights

and interests are possessed and by which the native title claim group have a connection to the area of land and waters the subject of this application.

4. The native title rights and interests claimed do not include any claim to rights to or interests in any minerals, petroleum or gas within the application area where these are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia.
5. To the extent that the native title rights and interests claimed relate to waters in an offshore place, those rights and interests are not claimed to the exclusion of all other rights and interests in relation to the whole or any part of the offshore place.
6. In relation to any area where a previous non-exclusive possession act was done, as defined in either the Native Title Act 1993 (Cth), as amended (where the act in question is attributable to the Commonwealth), or Titles (Validation) and Native Title (Effect of Past Acts) 1995 (WA), as amended, (where the act in question is attributable to the State of Western Australia), the native title rights and interests claimed are those set out in (2).

Miriuwung Gajerrong (WA Area 2)

The Miriuwung Gajerrong claim involved several areas of land (including intertidal land) on the eastern side of the Cambridge Gulf on both sides of the WA/NT border. The original claim was lodged in 1994 and led to an initial determination by the Federal Court, an appeal to the Federal Court and an appeal to the High Court, all of which led to clarification of the meaning of native title, how it can be extinguished or partially extinguished and how it exists as a bundle of rights, which can be separately impaired or extinguished. The final consent determination was made in 2003.

The Miriuwung Gajerrong native title rights have been determined to include the non-exclusive right to use and enjoy the land in accordance with their traditional laws and customs. This includes the right to²⁴:

- Hunt, gather and use natural resources, including food, medicinal plants, timber, stone and wild tobacco;
- Live on the land, camp and erect shelters;
- Engage in cultural activities on the land and conduct ceremonies; and
- Access, maintain and protect areas of significance.

Note: The case deals with land subject to native title claims in Western Australia and the Northern Territory. Two agreements were reached and provided to the Federal Court as consent determinations at the time of the decision (9 December 2003). A third consent determination relating to areas where native title was found to exist in Western Australia was registered on the Native Title Register of Consent Determinations on 26 July 2005. This final consent determination was as a result of a court order that the determination in relation to the native title that was found to exist in the Western Australian area was only to "take effect" once a registered native title body corporate was identified as the prescribed body corporate (in line with the requirements of s 57 of the *Native Title Act 1993*(Cth) (NTA)).

²⁴ <http://www.atns.net.au/agreement.asp?EntityID=2358>

3.3 *Consideration of native title over sea country in Western Australia*

From the summary of coastal native title claims above it is clear that Traditional Owners of sea country are seeking to use the native title claim process to gain recognition of their inherited customary rights and obligations over coastal land, islands and sea, as well as customary rights to the living (and some non-living) terrestrial and marine resources. Some of the claims extend well into Commonwealth waters. However, in the native title claims that have been determined so far, none have recognised Aboriginal inherent rights and interests beyond the lowest astronomical tide. Furthermore, native title rights in intertidal land (which includes reef flats when covered by no more than two metres of water) have been determined in all case so far to be non-exclusive – i.e. native title rights on inter-tidal land are shared with other legal rights (such as recreational fishing).

Strelein (2005) has reviewed the determination of native title for the Bardi Jawi claim over the Dampier Peninsula and adjacent Buccaneer archipelago, noting that:

His Honour did not recognise native title outside of the inter-tidal zone and close by reefs. This is another puzzling aspect of the decision given that evidence was provided by many witnesses of their cultural connection to the sea, their historical use of mangrove log rafts and dug out canoes and their reliance on the sea as a primary source of food, including turtle and dugong. His Honour states that

‘the evidence as to use of the open sea beyond the inter-tidal zone was limited to use. It did not establish definable rights under traditional Law and custom in relation to that use. In any event given that the applicants eschew any right to commercial fishing and given that any rights of use of the open sea could only be non exclusive, the claimed right is somewhat tenuous.’ [1108].

Arguably French J does not follow his own formulation of the proof of connection through assertion, nor put the use of sea country into the broader context of Law and customs related to the distribution of resources from the sea (in particular the cutting and prioritisation in serving dugong and turtle that is intimately related to kinship and authority systems). Also, his Honour again seems to distinguish between customary rights and traditional Law rights. It is unclear how this will impact on the right to engage in the significant cultural practice of hunting for turtle and dugong outside of the determination area. In all, the decision provides limited protection to the community in relation to their sea country, which, as his Honour acknowledges, is perhaps the most important part of their country given the sustenance it provides.

The applicants also sought the right to protect a significant men’s religious site within the sea, which was the subject of gender restricted evidence. Although this right was specifically not claimed as an exclusive right, His Honour observed that:

the evidence was directed to the spiritual significance of the area and the necessity to keep people away from it. The right to care for and protect it referred to in the claim, was underpinned by evidence that was entirely directed to a need to exclude people from visiting it ... On the evidence of Mr Sampi the non- exclusive right to go to the area and move about on it could only be incidental to a right to exclude or prevent others from crossing the area or visiting it. Given that the common law cannot recognise the true primary right being sought in this case, the ancillary right cannot be recognised [1112-3].

This conclusion is inconsistent with the determination confirmed by the High Court in Yarmirr, which highlighted that within the non-exclusive native title determination area, there may be particular rights over areas of cultural and spiritual significance.

Another puzzling aspect of the Bardi Jawi determination is that although the Bardi Jawi were recognised as one people, no determination was made of the existence or otherwise over the traditional Jawi country on the islands of the Buccaneer Archipelago, leaving considerable uncertainty about the rights of Traditional Owners on those islands.

Uncertainty remains also about Aboriginal rights to hunt dugong and turtle and conduct other cultural practices beyond the tidal zone. The lack of legal certainty places a burden on Aboriginal people and policy-makers to negotiate alternative mechanisms to accommodate the reality of Aboriginal peoples' ongoing cultural connections to the sea. The Aboriginal Fishing Strategy is an example of how policy development can achieve a greater degree of cultural recognition and management flexibility than is prescribed by the native title process, though it should be noted that the Fishing Strategy does not address the hunting of dugongs and turtles which, as non-fish species, are not the responsibility of the Fisheries Department.

4. *Indigenous involvement in Natural Resource Management*

During consultations undertaken in 1993 for the Australian Government's Coastal Zone Inquiry²⁵, coastal Aboriginal people in Western Australia expressed concern about their lack of involvement in many aspects of marine and coastal management, including fisheries and mariculture management, coastal planning and rezoning, as well as their lack of involvement in world heritage, marine park and national park planning and management. Some coastal groups also reported that their access to the coast, and therefore their opportunities to pursue their customary marine activities, was difficult in areas where there are large coastal pastoral leases, through which permission to transit is either refused or is only granted on payment of a fee.

While uncertainty and frustration remain about the level of recognition of Indigenous rights and interests in coastal and marine management, as indicated by the discussion on native title above, the opportunities for Aboriginal involvement in natural resource management in the north-west have increased considerably over the last 15 years. This Section provides an overview of Aboriginal capacities and involvement in:

- Dugong and turtle management;
- Saltwater Country Project
- Regional natural resource management;
- Coastal surveillance; and
- Marine park and world heritage management.

4.1 *Dugong and marine turtle management*

The Kimberley Land Council (KLC) is one of the partners that comprise the North Australian Indigenous Land and Sea Management Alliance (NAILSMA)²⁶, which, together with the Cooperative Research Centre for Tropical Savannas, is coordinating a community-based approach to dugong and marine turtle research

²⁵ Smyth (1993)

²⁶ www.nailsma.org.au

and management across northern Australia²⁷. The project partners of the Dugong and Marine Turtle project are:

- Kimberley Land Council
- Northern Land Council
- Carpentaria Land Council Aboriginal Corporation
- Balkanu Cape York Development Corporation and
- Torres Strait Regional Authority.

The partner organisations oversee the delivery of the project through Regional Activity Plans in selected ‘pilot’ communities. The Regional Activity Plans, developed through community consultation, identify Traditional Owners’ needs and aspirations, the issues and threats facing dugong and turtle management, and the management and research activities that communities wish to undertake. Despite the many different backgrounds and locations of the communities involved, many similar issues have been identified, including:

- A commitment to maintaining and valuing Indigenous Knowledge and customary practice as the basis for sustainable management plans;
- The need for more readily accessible scientific information on dugong and marine turtle populations and habitats;
- The need to develop capacities of Indigenous rangers and land managers to be more actively involved in management and research of dugong, turtles and their habitats;
- Wider partnerships with other Indigenous communities, researchers, government and industry to improve understanding of the threats to dugong and marine turtles, including entanglement in nets, marine debris, boat strikes, predation by feral animals, Indigenous harvest and habitat destruction; and
- The need for wider education about dugongs and marine turtle management issues within communities, as well as transfer of knowledge to people outside of the communities such as tourists, scientists, policy-makers and the general public.

NAILSMA works with the project partners, providing coordination and undertaking cross-regional activities such as:

- Facilitating communication amongst participating Indigenous communities;
- Standardised information recording and storage;
- Training and exchange visits between participating communities;
- Commissioning relevant reviews and analyses such as a socio-economic study of the value of dugongs and turtles to Indigenous livelihoods;
- Ensuring Indigenous representation in government initiatives, planning and committees; and
- Communication activities to improve public understanding of the rights, roles, responsibilities and achievements of Indigenous people in managing dugong and marine turtles.

A Technical Reference Group of researchers, government, non-government and industry representatives has also been formed to support the project, providing professional advice and expertise on dugong and marine turtles and management issues. With funding of \$3.8 million over 2.5 years from the Australian Government’s Natural Heritage Trust and cash and in-kind

²⁷ http://www.nailsma.org.au/projects/dugong_turtle.html

contributions from project partners and participating communities of over \$3 million, the project represents a substantial commitment by all involved. NAILSMA, the project partners and communities believe that by working together they will contribute to a long term vision of healthy and sustainable populations of dugong and marine turtles that support Indigenous livelihoods across north Australia. A Network Map of the NAILSMA Dugong and Marine Turtle Project is reproduced on the next page.

The Kimberley Turtle and Dugong project is being undertaken Bardi Jawi and Mayala Traditional Owners on their country on the Dampier Peninsula 200km north of Broome. The project involves working with the people from the two major communities of Lombadina/Djarindjin and Ardyaloon (One Arm Point) as well as seeking input from the many family blocks or outstations.

The Bardi Jawi people on the Dampier Peninsular were identified to undertake the pilot project within the Kimberley because of their strong connection to sea country and utilization of the sea resources such as turtle and dugong. The Turtle and Dugong project sits within the Land and Sea Management Unit of the KLC, which undertakes Land and Sea management projects with Traditional Owners on their lands. The Project is guided by its Regional Activity Plan (RAP) that sets out what is to be achieved and how these activities will be undertaken. The RAP has been prepared by the Kimberley Land Council on behalf of the Bardi Jawi and Mayala peoples, reflecting their aspirations and concerns for marine turtle and dugong management. With direction from the steering committee, consisting of elders as well the younger generation of traditional hunters from the community, the committee steers the project activities as identified in the RAP. The project is taking place along with the establishment of the Bardi Jawi Ranger group, which is involved in the monitoring sea country and in the development of culturally appropriate models of management of saltwater country.

4.2 Saltwater Country Project²⁸

Mayala, Dambimangari, Uunguu and Balangarra Traditional Owners of the North Kimberley coast have been doing sea trips since 2005 as part of the Saltwater Country Project, coordinated by Kimberley Land Council's Land & Sea Unit of the Kimberley Land Council with the support of the Western Australian Department of Indigenous Affairs. Elders were keen to get back to country to teach young people the stories for places and to keep an eye on developments on the coast. For many people it was their first time seeing their country. As a result of these trips, Traditional Owners have become concerned about the number of charter tourist boats visiting country without permission from Traditional Owners and also about the potential impacts from the many new pearl farms and other commercial ventures starting up along the coast. The Saltwater Country Project, funded by the Natural Heritage Trust (NHT) is about making a sea country plan that covers all of the important places and issues, including establishing and supporting sea ranger programs.

The broad scale Saltwater Country project has led to more local scale projects that combine monitoring country, actively managing country and recording and passing on traditional knowledge. A feature of these local projects is their integration of land and sea management activities, consistent with the integration of land and sea in the concept of sea country. The following information about local saltwater country projects are based on 2006 Coastwest Project summaries²⁹.

Uunguu Saltwater Country Project

This project, involving the Wunambal-Gaambera Aboriginal Corporation supported by the KLC Land and Sea Unit, aims to implement the outcomes of the Saltwater Country Project for Uunguu Traditional Owners at three priority sites in Vansittart Bay. This will involve:

- developing site plans at Bougainvillea Peninsula, Jar Island and Jalandal;
- monitoring of cattle impacts on rock art sites and vine thickets;
- monitoring of bandicoot populations;
- monitoring of tourist impacts;
- recording Indigenous knowledge of natural and cultural resource management; and
- project support and capacity building for Uunguu Traditional owners.

Mayala Saltwater Country Project

This project, involving the Mayala Native Title Claim Group with the support of the KLC Land and Sea Unit, aims to implement the outcomes of the Saltwater Country Project for Mayala Traditional Owners at three priority sites in the Buccaneer Archipelago. This project involves:

- developing site plans at Long Island, Helpman Islands, Hidden Islands, Mermaid Islands;
- maintaining freshwater source;
- provision of appropriate signage;
- monitoring trochus stocks;
- monitoring tourist impacts;
- recording Indigenous knowledge of natural and cultural resource management; and
- providing project support and capacity building for Mayala Traditional owners.

²⁸ *Kantri Laif Issue 2, 2005*

²⁹ www.wapc.wa.gov.au

Balanggarra Saltwater Country Project

This project, involving the Balanggarra Native Title Working Group with the support of the KLC Land and Sea Unit, aims to implement the outcomes of the Saltwater Country Project at three priority sites: King George River, Berkeley River and Lacrosse Island. This involves:

- developing site plans;
- supporting on ground management, such as weed control and installation of appropriate signage;
- monitoring turtle nesting;
- monitoring cattle impacts in vine thickets;
- monitoring the status of Northern Quolls
- monitoring tourist impacts;
- recording Indigenous knowledge for natural and cultural resource management; and
- providing project support and capacity building for Balanggarra Traditional Owners.

Dambimangari Saltwater Country Project

This project, involving the Dambimangari Native Title Working Group supported by the KLC Land and Sea Unit, aims to implement the outcomes of the Saltwater Country Project for Dambimangari Traditional Owners at three priority sites in the Northwest Kimberley. This involves:

- developing site plans;
- specific on-ground actions;
- monitoring turtle and dugong populations;
- monitoring tourist impacts;
- recording Indigenous knowledge for natural and cultural resource management;
- providing project support and capacity building for Dambimangari Traditional Owners.

Examples of other NRM projects with Indigenous involvement being undertaken in coastal region of the Kimberley include:

- **Lurrujarri Heritage Trail Management Plan**

This project, involving the Goolarabooloo Millibinyarri Aboriginal Corporation, is focused on *Lurrujarri* (coastal dunes) North of Broome which is part of a traditional song cycle and Dreaming trail. This visually spectacular, ecologically and culturally important area is under intense pressure from increasing tourism. Native title claimants for the area, Goolarabooloo, will address inappropriate coastal access, through community education, interpretative signage, strategic information shelters, track rationalisation, campsite relocation and fencing.

- **Goombaragin Coastal Access Trail**

This project, involving the Gnardumunn Aboriginal Corporation and the Kimberley College of TAFE, aims to construct an appropriate coastal access trail to the beach to minimise erosion and provide safe access for members and visitors to the community.

4.3 Kimberley Caring for Country Regional Partnership Agreement

The Australian Government's Indigenous Coordination Centre (ICC) in Broome and the Kimberley Land Council are currently facilitating the negotiation of a Caring for Country Regional Partnership Agreement (RPA) for the west Kimberley region.

The RPA was initiated by the four peak Aboriginal community organisations in the Kimberley: Kimberley Aboriginal Law and Culture Centre (KALACC); Kimberley Land Council (KLC); Kimberley Aboriginal Language Resource Centre (KLRC) and Kimberley Aboriginal Pastoralists Association (KAPA). Another key Indigenous body is the Kimberley Aboriginal Reference Group (KARG), which is a representative body created to provide guidance to the Kimberley NRM group on matters related to the formation and implementation of NRM strategies and investment plans. KARG's role is expanding and will include participation in the RPA project. The KARG group has had strong secretariat support from the appointment of a Rangelands Indigenous Engagement Officer (RIEO), however this position has been unfilled November 2006.

A key goal of the RPA is to develop a regional Caring for Country Plan which would be generally consistent with the rangelands NRM Strategy and be a mechanism for ongoing Indigenous engagement in a range of Caring for Country activities that are already occurring or are planned to occur. The broader purpose of the RPA is to develop:

A collaborative structure and approach to the implementation of Caring for Country strategies which generate social, environmental and economic benefit to Indigenous people in the Kimberley. Includes agreement about working together, identifies roles and responsibilities, nominates agreed priorities and strategies and associated commitments to undertake them. Continues to meet and fosters leadership and capacity building and acts as a single entry point for collection of knowledge, research and planning and has an advisory, advocacy and coordination on future projects. One of the main roles of the C4C RPA members is to guide the development of the C4C Plan, receive it and commit to implementing strategies as outlined. It is envisaged that the strategies outlined below are pursued concurrently and that the larger RPA signatory or reference group is supported by an implementation team and 1xfte for work associated with RPA³⁰.

The proposed collaborative framework for the Caring for Country RPA is provided on the next page.

4.4 Indigenous involvement in the Rangelands NRM Region

The land and coastal waters adjacent to the North West Marine Region lie within the Rangelands NRM Region, which includes most of the land area of Western Australia (see Figure 7). NRM strategies and projects within the Rangelands NRM Region are administered in four distinct geographical sub-regions: the [Kimberley](#), [Pilbara](#), [Gascoyne-Murchison](#) and [Goldfields-Nullarbor](#). This Section summarises opportunities and initiatives for Indigenous involvement in the [Gascoyne-Murchison](#), [Pilbara](#) and [Kimberley](#) sub-regions which extend to the limit of state waters adjacent to the North West Marine Region.

³⁰ Proposed framework for the West Kimberley Caring for Country Regional Partnership Agreement, Broome ICC.



Figure 7: Map of Rangelands NRM Region

The Gascoyne-Murchison Sub-Region

The coastal portion of the Gascoyne-Murchison NRM Sub-Region extends from Kalbarri National Park in the south to Exmouth Gulf in the north. The *Draft Gascoyne-Murchison Natural Resource Management Plan*³¹ released in 2005 provides the following description of the Indigenous peoples of the sub-region:

The nomadic Indigenous peoples of the regions saw their timeless existence vanish before them. As lands were fenced and stocked with foreign animals, the Aboriginals were forced away from their traditional hunting and ceremonial sites. With tribal disintegration, fragmented family groups tended to congregate on pastoral properties to follow an adapted lifestyle. With the early spread of pastoralism, Aboriginal people were confronted with a

³¹ http://www.rangelandswa.info/downloads/gas-mur_draft.pdf

strange industry comprised of small groups of white men tending mobs of peculiar beasts. Sometimes animals appeared long before their human owners. Initially many Aboriginal groups were terrified, believing the unfamiliar creatures to be devils. Sometimes the horse and rider, observed from a distance, were thought to be a single monster.

In pastoral regions Aborigines became the backbone of the cattle industry, building it up from scratch. During the late nineteenth and early twentieth century many stations only employed a sprinkling of whites, with all essential tasks and services performed by local Aboriginal men and women. Many station lessees conceded that the stations could not survive without Aboriginal labour.

The Draft Management Plan contains no Targets or Strategies regarding the involvement of Indigenous people in NRM or the protection and management of Indigenous cultural values associated with the NRM Sub-Region

The Pilbara NRM Sub-Region

The coastal portion of the Pilbara NRM Sub-region extends from Exmouth Gulf to the southern end of Eighty Mile beach. In 2004 the Rangelands NRM group released a Discussion Paper on NRM issues facing the Pilbara NRM Sub-region, based on consultations conducted with key organisations and interests groups. The Discussion Paper includes a section titled *Indigenous Natural Resource Management for Country in the Pilbara*, containing issues and aspirations contributed during an Indigenous consultation workshop. The following extract from the Discussion Paper summarises Aboriginal connections to country in the Pilbara:

The region's Aboriginal population of about 5200 people, living in towns and 37 scattered communities, is 12 per cent of the total Aboriginal regional population, the third highest proportion of Aboriginal people in the State.

Aboriginal people in the Pilbara have a very strong spiritual connection to the Pilbara Land. Their culture and history are written in the land. Their cultural belief system stems from the Dreaming when it is believed that the landscape and all geographical features within it, including water and all species of flora and fauna, were formed by Dreamtime beings or Dreamings. Today all of these features are important to Aboriginal people in a variety of cultural, social and economic ways.

The ability to still maintain culture is a strong indicator of ecosystem health and therefore management of environmental and cultural values is inextricably linked.

Employment of Aboriginal people has traditionally been in the pastoral industry, particularly on one of about 22 Aboriginal pastoral leases in the north of the State. Efforts are being made to increase Aboriginal employment in the mining industry, particularly through contract work such as earthmoving, road works, gardening and catering.

A small Aboriginal tourist operation has operated for some years in the Karijini National Park, new and growing 'bush tucker' and tourism industries based on natural resource management also has promise.

The Pilbara NRM Sub-region Discussion Paper identified the following needs of Aboriginal people in the region:

- Restore and protect natural and cultural resources;

- Improving water quality, weed control, dust and erosion control, pollution control, vehicles damage, feral animal control, loss of native plants and animals, degradation of land, salinity;
- Capacity building and resources for land and water management;
- Management of public and tourist access to environmentally and culturally sensitive areas;
- Greater co-operation between Aboriginal groups and mainstream agencies to address environmental issues and priorities.

The Discussion Paper identified the following opportunities to address Aboriginal people's concerns and aspirations, including:

- Aboriginal lands provide a strong basis for management of natural resources;
- Cultural and biodiversity surveys and monitoring;
- Management of national parks, conservation areas, tourism operations, fisheries, revegetation, fire control;
- Bush foods;
- Bush Medicines;
- Horticulture;
- Eco-tourism, visitor education;
- Protection of threatened species and feral animal control;
- Ranger programs;
- Partnerships between Aboriginal and mainstream agencies;
- Partnerships between Aboriginal and Non Aboriginal Land Managers;
- Access to Natural Heritage Trust Funding.

An Indigenous Land Management Workshop was held in Port Hedland in October 2004 to enable Aboriginal people to come together and talk about what is important for looking after land and sea country. Workshop participants discussed:

- the best way to refer to areas of country in terms of looking after country;
- what makes country healthy; how you know when country is not healthy;
- what should be done in the next five to ten years for land and sea management; and
- how Pilbara Aboriginal people can work with government, industry and community people for looking after country.

The following issues, concerns and observations were raised at the workshop:

How do you know when country is healthy

Free to do hunting

- Plentiful (bush turkeys & kangaroos)

Smell of Environment

- Sweet, you can smell the plants, ocean & winds

Plants are healthy

- You feel good in your heart, you can see that it is good and talk and sing to it

When people are on country

NO sick animals, no carcasses, the beaches are clean

Seasons

- Cyclones
- Seasons speak to Country first
- Catch fish Barramundi come after the first rains
- Kangaroos vomit, Kangaroo and bush turkey season
- November onwards Salmon
- Fishing (February to August/September)
- Sand / Land

No rubbish

No more impact on sacred sites

Meaningful employment

Risks

Aerial baiting

- No more
- Domestic dogs
- Children
- Residential areas

Tenure rights and interests

Local Government

Pastoral leases (2015)

Indigenous involvement and coordination

Fishing and wasting fish

Over-fishing

- Exceeding limits

Shell Collection

Starfish & Cowry and other shell collection – professionals & recreational

- need to limit live collection

Rubbish

Washed up (Some locations only)

- Tip – so little dumps

Fire

Camping leaving fires

- Respect on both sides

Introduced Plants

No Buffel grass or weeds

Introduced Animals

Cats (Kill wildlife)

- Camels, cattle, horses (ruin water supply)
- Damage to waterhole by cattle

Lack of awareness, signage & enforcement

Networking with owners for access

- One road in - GOOD

Species Loss

Targeting species

- People driving on beaches, disturbing breeding & nesting sites

- Establish “walk only areas”
- Reproduction
- Destroy / crush
- Sand erosion, Compression
- Kills Hermit crabs
- Bush tucker disappearing
- birds disappearing, don't hear white cockatoos
- brown pigeons (used to be around homestead)
- not as many kangaroos anymore;
- don't see emu and turkey anymore,
- don't see so many goanna and echidna anymore;
- bush fruits;
- Bees, no more bush honey, bush onions (sweet potato) or tomatoes.

Access

- Permission to access the beach
- Tourists need permission
- Too many vehicles driving everywhere
- Natural Resource Management in the Pilbara Discussion and Issues Paper – Indigenous Natural Resource Management for Country in the Pilbara

Mining

- No respect for culture and where it causes sick people, through digging up country
- Erosion and sediments
- Pollution
- Bush tucker disappearing People
- Dust
- Water usage
- Land disturbance
- Poisons and toxins.
- Dewatering
- Effects on fish
- Hole in ground
- Dust affects wheat for damper, (mixed with iron ore dust)

Water

- Towns taking water country drying up
- Salt from planted date palms getting into freshwater systems

Sacred Sites

- Grave sites are not protected
- Got to abide by CALM rules when we go to Millstream (where we can and can't walk, timeframes)
- Millstream before white man came, was an oasis to people living there
- Destroying sites and removing artifacts
- Rain-making sites water sources rock holes
- Tourists and miners are destroying sites and removing artifacts from sites.

Tradition Practices lost

- Not allowed to make bough sheds at Millstream
- Want to go back to country to live free but not allowed (locked up in white man's country; locks on gates)
- Millstream made into a National Park without consultation with tribal people;

- Senior people in National Parks are still white people, NOT traditional people;
- Water out of Harding Dam spiritual,
- Livelihood;
- Four wheel drives and quad bikes affect native flora and fauna cause erosion

Kimberly NRM Sub-Region

The coastal portion of the Kimberley NRM Sub-Region extends from the southern end of Eighty Mile beach in the south northwards to the Northern Territory border. In 2006 the Rangelands Regional NRM Groups released a draft Management Plan for the Kimberley NRM Sub-region, which includes the following description of Aboriginal people of the area, without making specific reference to Aboriginal ownership, occupation, use or management of sea country in the region:

Aboriginal people have inhabited the region for at least the past 40,000 years. There is abundant archaeological evidence for people's occupation of the Kimberley over a long period of time. The region is scattered with old campsites and often rock overhangs contain a rich assortment of wall paintings. The area between the Kimberley and Arnhem Land most likely contained the points of entry for Aboriginal people from the islands to the north probably more than 40,000 years ago (Shaw 1981,p.20).

The draft Management Plan for the Kimberley NRM Sub-region incorporates Indigenous values and priorities regarding NRM throughout the document, including:

- Reference to the Saltwater Country Project, described above;
- Reference to the Dugong and Marine Turtle Management Project, described above;
- Support for fisheries allocations to include Indigenous harvest;
- Support for Indigenous involvement in fisheries management;
- Support for Indigenous involvement in aquaculture;
- Support for the teaching of local Indigenous histories in all schools.

As noted above, the Kimberley Aboriginal Reference Group (KARG) is a representative body created to provide guidance to the Kimberley NRM group on matters related to the formation and implementation of NRM strategies and investment plans. KARG's role is expanding and will include participation in the RPA project.

4.5 Indigenous Land Management Facilitators³²

To help Indigenous Australians to address their land management needs, contribute to national objectives and to gain access to [Natural Heritage Trust](#) (NHT) funding, the Australian Government has established a national network of 13 Indigenous Land Management Facilitators (ILMFs). The Facilitators provide assistance to Indigenous people involved in land management. They are funded by the NHT and are employed through regionally based host agencies in each state and territory.

The role of the Indigenous Land Management Facilitators is to:

- Advise Indigenous communities on opportunities available through the NHT/NAP (e.g. [Envirofund](#));
- Ensure Indigenous communities are aware of the opportunities either as individuals or as a group to get involved in NRM activities;
- Encourage and promote Indigenous representation on [Natural Resource Management](#) (NRM) Regional Bodies (e.g. Catchment Management Authorities);

³² <http://www.environment.gov.au/indigenous/ilmf/index.html>

- Work with and support the operations of NRM Regional Bodies;
- Foster and support existing Indigenous and non-Indigenous NRM facilitator networks in their regions;
- Promote commitment to and participation in sustainable land management and nature conservation by managers of Indigenous land;
- Foster the involvement of Indigenous people in national, regional and local activities for achieving ecologically sustainable development;
- Encourage and promote Indigenous representation on Regional or Catchment Indigenous Reference / Advisory Groups;
- Assist Indigenous communities to engage in regional planning and the implementation of initiatives supported by the NHT/NAP and other Australian Government NRM Programs;
- Recognise and support the cultural values and traditional knowledge that Indigenous communities contribute towards NRM;
- Assist Indigenous communities in building their capacity to manage land and engage with other NRM stakeholders;
- Provide links to other Indigenous land management organisations in their regions (e.g. Indigenous Land Corporation);
- Act as a broker between Indigenous and non-Indigenous land managers in relation to developing better working relationships;
- Provide advice to the Department of the Environment and Water Resources and the Department of Agriculture, Fisheries and Forestry (DAFF) on how to engage more effectively with Indigenous stakeholders;
- Assist in the delivery of better-coordinated Australian and State/Territory Government services to improve the social and economic well being of Indigenous communities;
- Act as a practical two-way link between Indigenous land managers, other individuals and organisations involved in promoting sustainable land management and nature conservation.

Two ILMFs are located within the north-west – one located in Broome based with the KLC Land and Sea Unit and one located in South Hedland based with the Indigenous Coordination Centre. The ILMF in Broome is playing a major role in negotiating the Caring for Country Regional Partnership Agreement described above.

4.6 Indigenous ranger groups

Many Indigenous ranger groups have been established across northern Australia over the last decade, some associated with the development of Indigenous Protected Areas³³, while others have taken on a range of caring for country roles on land and sea independently of any designated protected area. In the Kimberley region, a Bardi Jawi ranger group has been established at One Arm Point associated with the NAILSMA Dugong and Marine Turtle Project. During 2006 and 2007 the Bardi Jawi Rangers have been conducting joint patrols with the Australian Customs Service (ACS) and Western Australian fisheries officers, patrolling the Kimberley coast for illegal foreign fishers³⁴. Several illegal fishing boats have been apprehended during these joint patrols³⁵.

³³ <http://www.environment.gov.au/indigenous/ipa/index.html>

³⁴ <http://www.fish.wa.gov.au/docs/media/index.php?0000&mr=446>

³⁵ <http://www.fish.wa.gov.au/docs/media/index.php?0000&mr=337>

Collaboration between the ACS and the Bardi Jawi Rangers is part of a pilot program between the ACS and several Indigenous ranger groups across northern Australia, in which the ACS provides training and fee-for-service payments to the ranger groups in exchange for surveillance and other assistance to the ACS³⁶. Similar fee-for-service arrangements are also being negotiated across northern Australia between Indigenous ranger groups and the Australian Quarantine and Inspection Service (AQIS).

4.7 Indigenous involvement in marine parks and world heritage areas

Over the last 20 years there has been increasing involvement of Indigenous people in the management of protected areas that been declared by governments over their Aboriginal traditional land and sea country, usually without their consent. The extent of this involvement varies between jurisdictions in Australia and there is generally less involvement in the governance and management of marine protected areas than in protected areas on land³⁷. International development of best practice guidelines in protected area management has also encouraged this trend to greater Indigenous involvement in protected area management³⁸.

Ningaloo Marine Park

The 2005-2015 Management Plan for Ningaloo Marine Park³⁹, which includes inshore reefs along the coast to the south of Exmouth Gulf, includes the following acknowledgement of Indigenous people's interests and opportunities for involvement in management:

***Social value and Indigenous heritage:** The area has significant Indigenous heritage value associated with historical and current use by Indigenous people.*

***Background** Ningaloo Reef and the adjacent foreshore have a long history of occupancy by Aboriginal communities. The foreshore and hinterland of North West Cape contain numerous Aboriginal sites such as burial grounds, middens and fish traps that provide a historical account of the early habitation of the area and a tangible part of the culture of local Aboriginal groups. The earliest Aboriginal groups to inhabit the peninsula were the Jinigudira and the Baiyungu people. The Jinigudira inhabited most of the land adjacent to the reef and northern cape, while the Baiyungu inhabited the southern areas of foreshore adjacent to the reef. The archaeological record of the Cape Range Peninsula is significant in that it provides the earliest confirmed record of Pleistocene marine resource use in Australia. Aboriginal habitation of the North West Cape and Exmouth is thought to have commenced at least 32,000 years (with some reports of 38,000 years before present and continues up to the present (Western Australian Planning Commission, 2004).*

Although the majority of local Aboriginal people live in towns such as Carnarvon and Onslow, individuals and families retain strong ties to particular sites. The Jinigudira and the Baiyungu still maintain and associate with the North West Cape and are recognised as the traditional owners of these lands (Gnulli Park Council, pers. comm.). Cardabia pastoral station surrounding Coral Bay is owned and managed by the Baiyungu community. Despite disruptions to traditional life, Aboriginal people seek to retain social,

³⁶ http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2007-07_indigenous_19.htm

³⁷ Smyth (2001)

³⁸ Borrini-Feyerabend et al. (2004)

³⁹ Marine Parks and Reserves Authority and the Department of Conservation and Land Management (2005)

religious and personal bonds with their traditional lands. Current Aboriginal usage of the area includes camping and fishing, as well as limited hunting of turtle and dugong.

Aboriginal heritage is protected under the Aboriginal Heritage Act 1972 and traditional hunting of turtle and dugong is permitted in accordance with the WC Act. The Gnulli Native Title claim is the only native title claim over the North West Cape area currently awaiting mediation in the Federal Court. The Gnulli Working Group is represented by the Yamatji Land and Sea Council (Yamatji Marlpa Barna Baba Maaaja Aboriginal Corporation).

Marine management issues in regard to Aboriginal heritage in the reserves include potential human impacts on historical sites (e.g. physical disturbance, litter), access for hunting and cultural activities, and the involvement of Aboriginal people in the management of the reserve. Under traditional law, Aboriginal people are responsible for, and obliged to protect, preserve and manage areas, sites and objects of Aboriginal significance associated with their country. In traditional terms, management includes protection and preservation of physical sites and objects as well as the traditional knowledge pertaining to them. A fundamental dimension of cultural knowledge to Aboriginal people today is the “meaning” of the land as it reveals the record of creation and the history of human activity. These responsibilities and obligations are of continuing importance to Aboriginal people, particularly with respect to teaching cultural heritage to the young. Management strategies include increasing the level of knowledge regarding the significance of Aboriginal heritage in the area and the involvement of Aboriginal people in the management of the reserves. The Coral Coast Park Council has been formed comprising representatives from

Management Plan for the Ningaloo Marine Park and Muiron Islands Marine Management Area the Gnulli Working Group, Baiyungu traditional owners and CALM to facilitate Aboriginal involvement in management of the Ningaloo Marine Park and the Cape Range National Park. Management of Indigenous heritage values in the reserves will seek to ensure that existing heritage sites in the reserves are protected from loss or degradation, and traditional activities are sustainable and maintained in collaboration with local Indigenous groups.

Requirements

Access for traditional hunting, significant sites and cultural activities. Protection of Indigenous heritage sites.

Management objective/s

1. To involve the local Aboriginal community in the management of the reserves.
2. To protect Indigenous heritage sites in the reserves.

Strategies

1. Through the Coral Coast Park Council, encourage Indigenous participation in the management of the reserves (CALM, Coral Coast Park Council).
2. Develop, in collaboration with the local Aboriginal community, an understanding of the significance of the area to Aboriginal people (CALM, Coral Coast Park Council).
3. Identify, in collaboration with the local Aboriginal community, the significance of Indigenous heritage sites in the reserves (CALM, Coral Coast Park Council).

4. *Develop, in collaboration with the local Aboriginal community, protocols and a monitoring program for traditional hunting in the reserves (CALM, Coral Coast Park Council).*
5. *Educate users of the reserves about the Indigenous heritage value of the reserves (CALM, Coral Coast Park Council)*

Shark Bay World Heritage Area

Shark Bay has been entered on the list of World Heritage sites because of its outstanding natural values. The Area is governed by a Ministerial Council, comprising two Australian Government and two Western Australian Government ministers, advised by a Community Consultative Committee and a Scientific Advisory Committee. The Committee comprises community representatives with knowledge or background in fields such as conservation, heritage, local government, fishing, tourism, Aboriginal matters, park management and/or agriculture. The Chair of the Scientific Advisory Committee (or nominated representative) is a member of the Community Consultative Committee. There is no requirement for Aboriginal representation on the Community Consultative Committee but a majority of members must be residents of, or live in the vicinity of, the World Heritage Property.

The 2006 Draft Strategic Plan also recognises the significant Aboriginal values associated with the area:

Cultural and historic sites of significance include Aboriginal midden sites, wreck sites and associated land camps, pearling camps, guano establishments and military camps.

Tindale (1974) identifies the immediate Shark Bay area as being occupied by the Malgana people with the Nanda people occupying the land south of Shark Bay to Kalbarri. A limited amount of information on the traditional life and customs of these people is available from records of observations of Europeans. Drawings made during the French scientific expeditions of 1801 depict semi-permanent Aboriginal camps on Peron Peninsula. Smoke was seen by navigators on Dirk Hartog Island, Edel Land and the eastern shores of Shark Bay. Since the 1850's, Aboriginal people have been closely involved in the pearling, pastoral and fishing industries and by the early 1900's had become reasonably well integrated with the Chinese, Malay and British settlers. Aboriginal people today have a strong involvement in the fishing industry.

There are over 80 known midden sites located along the coastline in the Shark Bay area. Aboriginal sites including open shell middens, quarries, rock shelters, artefact shelters, burials and stone arrangements have been recorded for Shark Bay. Most of these sites directly overlook the shoreline or are close to it.

The archaeological research has provided valuable information on occupation and use of the Shark Bay area by Aboriginal people. Archaeological research has been conducted at several sites across the Shark Bay area and collections have been made from several of them including sites at Eagle Bluff, Monkey Mia and Silver Dollar (south of Denham) (Bowdler 1990a, 1990b, 1990c, 1995, 1999) and a site at the Zuytdorp Cliffs near the shipwreck (Morse, 1988). The Silver Dollar site provides the oldest and most detailed evidence of human occupation of the region (Bowdler, 1995, 1999). It was occupied for two periods, firstly between 30,000 and 18,000 years before present, and secondly between

7000 and 6000 years before present (Bowdler 1999). The rockshelter sites at Monkey Mia are dated to within the last 1000 years and the Eagle Bluff and Zuytdorp sites at 4000 to 4600 years before present (Bowdler 1995, 1999, Morse 1988).

The Draft Strategic Plan provides for Aboriginal use of resources within the World Heritage Area:

Use of flora and fauna by aboriginal people is provided for under the Wildlife Conservation Act. Flora and fauna can be taken by Aboriginal people for food for consumption (not sale) except for species declared as threatened or specially protected under the Wildlife Conservation Act. The only exception to this is the dugong which can be taken despite its classification as a species in need of special protection.

The fauna species targeted and the numbers of animals taken by Aboriginal people in Shark Bay are difficult to determine. Small numbers of dugongs, green turtles, kangaroos and other fauna (lizards, goannas) are known to be taken in the World Heritage Property.

The management of hunting of flora and fauna in marine and terrestrial conservation reserves has been considered in the Shark Bay Marine Reserves Management Plan and the Shark Bay Terrestrial Reserves Management Plan. The taking of flora and fauna outside these reserves will be managed in accordance with relevant legislation and policy.

The use of fish resources by Aboriginal people is managed through the Wildlife Conservation Act and the Fish Resources Management Act 1994. This use is presented in the Shark Bay World Heritage Property Management Paper for Fish Resources (1996).

Aboriginal resource use must be managed sustainably to ensure there are no adverse impacts on World Heritage values. It is important that these activities are monitored to ensure that the World Heritage values are not degraded. If certain activities have potential to impact on these values then, in liaison with local Aboriginal communities, the issue should be reviewed and appropriate steps taken to protect these values.

Objective

Ensure that Aboriginal use of resources do not adversely impact on World Heritage values and the overall integrity of the World Heritage Property.

Strategy

Through liaison with Aboriginal communities, seek to establish cooperative approaches to traditional resource use and the protection of World Heritage values.

5. Concluding Remarks

Indigenous people have had a continuous association with the North West Marine Region for tens of thousands of years, from the beginning of human settlement in Australia to the present. The saltwater peoples of the region today continue to rely on coastal and marine environments and resources of the region for their cultural identity, health and wellbeing, and their domestic and commercial economies. Despite the severe impacts of colonisation, associated with dispossession, dislocation and marginalisation, which have constrained Aboriginal people from maintaining their cultural connections and obligations to their sea country, these connections have remained strong throughout much of the region. Traditional Owners' continuing commitment to their sea country is demonstrated through their native title claims and their many initiatives to regain their role as managers of the cultural and natural values of the region.

The development and implementation of the North West Marine Bioregional Plans provides an opportunity for the Australian Government, in collaboration with the Government of Western Australia, the Rangelands NRM Group and others to continue and strengthen the processes of supporting Indigenous aspirations and initiatives in sea country management.

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ATTACHMENT 1

Recommendations of the Western Australian Draft Aboriginal Fishing Strategy

SUMMARY OF RECOMMENDATIONS

Customary Fishing

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

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

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

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

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

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

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

Aboriginal Fishing Area 1: Area of water that is generally adjacent to land on which access can be controlled by Aboriginal interests, adjacent to isolated Aboriginal

communities, in which relatively low fishing pressure exists and within State waters jurisdiction [three nautical miles]; and

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

Recommendation 8: (p. 44) Provision for the Minister to regulate any customary fishing activities that threaten sustainability or are inconsistent with Aboriginal tradition as he or she thinks fit. Any proposals to change customary fishing parameters to be undertaken only after consultation with Aboriginal interests. Customary fishing parameters should be established within the following a recommended framework which addresses:

- Bag and possession limits
- Size limits
- Seasonal closures
- Closed areas
- Fishing gear and method restrictions
- Protected species

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

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

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

Involvement in Fisheries Management

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

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

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

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

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

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

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

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

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

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

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

- Minimum employment targets that reflect the proportionate representation of Aboriginal people in the State population; and the proportionate representation of Aboriginal people in the population for each region as appropriate;
- Affirmative training and mentoring programs to encourage those individuals of Aboriginal

descent who seek more senior positions within the Department to gain the capacity to do so; and

- An Indigenous Australian Recruitment and Career Development Strategy.

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

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

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

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

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

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

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

Recommendation 27: (p. 79) In the case that native title as determined permits unsustainable fishing practices, the preferred action is consultation with native title interests to develop a

workable solution. Failing this, consideration must be given to legislative procedures that prioritise the responsibility to protect fish above native title rights to take fish, and may lead to the payment of compensation to native title holders.

Economic Development

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 39: (p. 98) In relation to the aquatic charter industry; • The Indigenous Fishing Fund also be available to purchase transferable fishing charter authorisations for the benefit of Aboriginal interests:

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