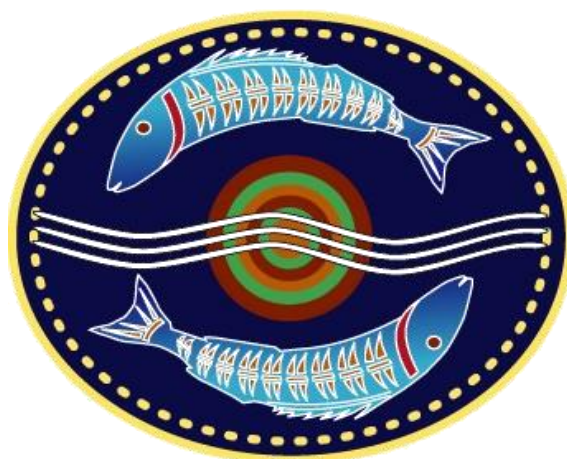


Western Australian Aboriginal Fishing Strategy



“Recognising the past, fishing for the future”

Ben Fraser



Department of Fisheries
Government of Western Australia

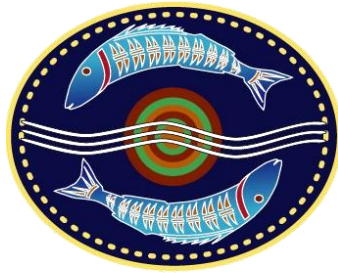


Australian Government

**Fisheries Research and
Development Corporation**

Project No. 2001/064

WESTERN AUSTRALIAN ABORIGINAL FISHING STRATEGY



“Recognising the past, fishing for the future.”

October 2004

Principal Investigator: Ben Fraser
Chairman: Hon E M Franklyn Q C

Address: Department of Fisheries
3rd Floor SGIO Atrium
168 St Georges Terrace
PERTH WA 6000
Telephone: 08 9482 7349
Fax: 08 9482 7389

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ACKNOWLEDGEMENTS

Acknowledgement must first be given to each of the many Aboriginal people throughout Western Australia who donated their time to pass on their knowledge and provide their views, ideas, interests and aspirations about fishing to this report. Their cumulative effort has initiated change.

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Graeme Stephens (Office of Aboriginal Economic Development)

Mike McMullan, Russell Dyson, Peter Rogers and Heather Brayford (Department of Fisheries)

PRINCIPAL INVESTIGATOR: Mr Ben Fraser

ADDRESS: Department of Fisheries
3rd Floor SGIO Atrium
168 St Georges Terrace
PERTH WA 6000
Telephone: 08 9482 7349
Fax: 08 9482 7389

OBJECTIVES:

To recommend to the Western Australian Government a strategy for:

- (i) the inclusion of traditional and cultural fishing practices within a framework of planned sustainable use of fish and fish habitat; and
- (ii) greater involvement of Aboriginal people in the fisheries sector, including commercial fishing, aquaculture, the aquatic charter industry, and fisheries management;

consistent with the Department of Fisheries' statutory obligations to conserve, develop and share the fish resources of the State for the benefit of present and future generations.

NON TECHNICAL SUMMARY:

The Western Australian Aboriginal Fishing Strategy (the "strategy") was developed following a three-year consultative process overseen by former Western Australian Supreme Court Judge, the Hon E M Franklyn QC. Formulation of the draft strategy was assisted by a working group, which included representatives of Aboriginal interests, the fishing sector, conservation interests and government.

The strategy provides recommendations to the Western Australian Government, focusing on three areas - recognition and inclusion of customary fishing in fisheries legislation; inclusion of Aboriginal people in the management of fish resources; and, promotion of economic development opportunities for Aboriginal people in the fishing, aquatic eco-tourism and aquaculture industries.

The strategy was developed in response to growing needs to recognise and include customary fishing rights and interests in a sustainable fisheries management framework.

For example, there is a need to identify what customary fishing entails, to effectively manage that activity and to develop customary fishing policy and legislation. Without this, the impact of customary fishing on fish stocks cannot be managed or accounted for effectively within an integrated fisheries management framework, where the aggregate effects of all fishing sectors is taken into account. There is also a danger that without effective management and recognition, Aboriginal fishing interests may be marginalised.

The strategy also recognises the need to enhance opportunities for the involvement of Aboriginal interests in the commercial fishing, aquaculture and aquatic tour industries. The benefits from this in terms of employment, training and financial independence for Aboriginal groups will be felt across the fishing sector and the wider community.

The primary outcome from the strategy is recommendations that set a policy framework and provide guidance for Government in recognising, acknowledging and addressing Aboriginal fishing rights and interests. Key recommendations include:

- A definition for customary fishing as a non-commercial, unique fishing activity, to be managed separately to commercial and recreational fishing.
- Recognition of priority for customary fishing in fisheries allocation processes.
- Engagement of Aboriginal interests in fisheries management through consultation processes that afford the Aboriginal fishing sector the same level of recognition as the commercial and recreational sectors. In addition to this, joint management approaches that recognise Aboriginal interests as not only key stakeholders, but having unique rights and interests in fish resources are recommended.
- Employment and training programs to build capacity and employ Aboriginal people in fisheries / natural resource management. Robust debate on fisheries management issues between Aboriginal, government and other interests require the involvement of people with skills in natural resource management and knowledge of Aboriginal community issues.
- Development of a fund to purchase commercial fishing authorisations on the open market for the benefit of Aboriginal people. There is an opportunity for the fishing sector in this regard, and the development of positive relationships between Aboriginal and fishing industry groups will play a vital role in ensuring successful outcomes.

At the time of writing this report, Government is giving consideration to the final recommendations of the strategy. There have, however, been a number of outcomes resulting from the strategy development process, including:

- approval of ongoing funding for an Aboriginal Fishing Management Officer;
- funding for an Aboriginal Trainee Fisheries Officer Program; and
- drafting of an agreement between the Commonwealth and the Western Australian Government relating to joint funding of several initiatives.

The inclusive process used to develop the Aboriginal Fishing Strategy has also resulted in improved relationships and understanding of Aboriginal fishing issues by Government, fishing sector and community interests. Consultation to develop the Aboriginal Fishing Strategy has provided the Department of Fisheries with significant information about Aboriginal interests and aspirations relating to fish, and has led the Department to develop significant expertise in the area of Aboriginal fisheries

management and consultation. This improved knowledge, expertise and relationships will be crucial in the implementation of Aboriginal Fishing Strategy recommendations.

Although Western Australia's Aboriginal Fishing Strategy is the most comprehensive of its type in Australia, it should be considered a first, but very significant, step to improving the recognition and inclusion of indigenous Western Australian's fishing rights and interests within fisheries legislation and management. It is acknowledged that much work remains, and the Aboriginal Fishing Strategy recommendations provide the framework within which this work can be undertaken in consultation with Aboriginal and other stakeholders.

KEYWORDS: **Aboriginal, customary fishing, fishing rights.**

SUMMARY OF RECOMMENDATIONS

Recommendation 1: The following key principles are to be maintained in the implementation of each of the Aboriginal Fishing Strategy recommendations.

- Sustainability and biodiversity objectives are paramount.
- Aboriginal people have continuing rights and responsibilities as the first people of Western Australia, including traditional ownership and connection to land and waters.
- Strategies must be consistent with the objects and provisions of the *Fish Resources Management Act 1994 (WA)*, *Pearling Act 1990 (WA)* and the *Native Title Act 1993 (Clth)*.
- Strategies must be consistent with a holistic, integrated approach to fisheries management and be accountable within Ecologically Sustainable Development (ESD) reporting frameworks.
- Strategies must be practical and able to be implemented within the existing legal, political and social structures of Western Australia.

Recommendation 2: Customary fishing applies within a sustainable fisheries management framework to persons:

- of Aboriginal descent;
- fishing in accordance with the traditional law and custom of the area being fished; and
- fishing for the purpose of satisfying non-commercial personal, domestic, ceremonial, educational or communal needs.

Recommendation 3: 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, consistent with the traditional practice of those communities.

Recommendation 4: Commercial access to fish resources by Aboriginal people should be addressed:

- in recognition of restrictions placed on Aboriginal people to access fish resources for commercial gain since European settlement and the desire of many Aboriginal people to be involved in commercial fishing; and
- separately to customary fishing in order to ensure practical and sustainable outcomes within the existing legal, political and social structures in Western Australia.

Recommendation 5: 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 accountable within a sustainable fisheries management framework.

Recommendation 6: Customary fishing 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 access rights, practices and sustainability requirements.

Recommendation 7: Pearling legislation pertaining to *Pinctada maxima* to include capacity for the Minister for Fisheries to allow for the use of that pearl oyster species for customary fishing purposes.

Recommendation 8: Educational information promoting and raising awareness in the broader community about customary fishing access rights, responsibilities, rules and practices must accompany changes to the management of customary fishing.

Recommendation 9: The importance of access to fishing areas by Aboriginal people be recognised by Government. The State should 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.

Recommendation 10: Customary fishing be recognised as a separate, key fishing sector activity and as such afforded the same level of engagement in fisheries consultative and management processes as the recreational fishing sector and the commercial fishing sector.

Recommendation 11: Consultation between Government and Aboriginal interests be undertaken through:

- an Aboriginal Fishing Management Advisory Committee (AFMAC), established under the *Fish Resources Management Act 1994* to provide advice to the Minister for Fisheries on Aboriginal fishing; and
- a dedicated body external to and independent of the Department of Fisheries, funded by Government to represent Aboriginal interests in fisheries management processes; and
- utilising existing Aboriginal community and organisation networks where appropriate.

Recommendation 12: 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 the final decision making authority as required under statute, fisheries management decisions which may impact significantly on Aboriginal interests, particularly in inland and intertidal waters in the Kimberley region, should be made through co-operative decision making processes to be developed in consultation with stakeholders.

Recommendation 13: Within any given fisheries allocation framework developed in Western Australia, customary fishing access rights should be given priority over all other fishing access, including commercial and recreational fishing.

Recommendation 14: Where possible, links should be created with recreational fishing creel surveys to obtain customary catch information. It is also desirable in the longer term to develop the capacity of Aboriginal people, particularly in remote communities, to monitor catch, undertake compliance and actively participate in the management of customary fishing.

Recommendation 15: Specific provision should exist, within an integrated fisheries management framework, to protect from other fishing activities, areas identified by the Minister for Fisheries as important for customary fishing.

Recommendation 16: 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 amongst 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 17: Resources be identified and secured to assist Aboriginal interests to be involved in the development of marine resource use plans.

Recommendation 18: 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 Aboriginal Recruitment and Career Development Strategy.

Recommendation 19: To provide opportunities to build capacity of Aboriginal people in natural resource management the Department of Fisheries;

- establish a Future Managers and Leaders program to enhance the ability for Aboriginal people to engage with 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, 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 20: An Aboriginal community relations program be established by the Department of Fisheries with 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 Aboriginal 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 specifically 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 21: Cultural awareness training be made compulsory for all Fisheries staff that deal with the public.

Recommendation 22: Joint or partnership fisheries management, research and education programs be identified, encouraged and developed with Aboriginal interests. Opportunities for the incorporation of traditional knowledge in these programs should be explored.

Recommendation 23: An Aboriginal Fishing Program be developed in the Department of Fisheries to administer, co-ordinate and implement Aboriginal fishing initiatives. Government should resource this program, with additional funding assistance sought from external organisations to enhance implementation of key initiatives and provide more effective services to Aboriginal clients.

Recommendation 24: A co-ordinated 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 Aboriginal interests. The Department of Fisheries and Office of Aboriginal Economic Development should play a key role in this process.

Recommendation 25: Any new allocation of commercial fishing authorisations to Aboriginal interests be administered through the open market process that has developed in Western Australia.

Recommendation 26: An Aboriginal Fishing Fund (the Fund) be created by the State Government to assist in the purchase of tradeable fishing authorisations on the open market for the benefit of Aboriginal Western Australians.

Recommendation 27: Contributions to the Fund be made by the State Government of Western Australia and the State seek contribution on a matching dollar for dollar basis from the Commonwealth. Additional opportunities for partnership funding should also be sought. 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 28: Principles for the Aboriginal Fishing Fund should include:

- Allocations from the Fund to be based on sound business principles.
- The Fund should not be used to purchase capital or infrastructure, or to allocate grants.
- A re-investment policy be included to strongly encourage Fund beneficiaries to re-invest in fishing authorisations.

Recommendation 29: Access by Aboriginal communities currently available under the Aboriginal community fishing licence policy be replaced as soon as possible with explicit allocations in a manner which ensures sustainable benefits to the Aboriginal community.

Recommendation 30: Programs to develop aquaculture involving Aboriginal interests in Western Australia be consistent with *A National Aquaculture Development Strategy for Indigenous Communities in Australia* (AFFA, 2001).

Recommendation 31: In relation to the aquatic charter industry;

- the Aboriginal Fishing Fund also be available to purchase transferable aquatic tour operator authorisations for the benefit of Aboriginal interests; and
- agreements between Aboriginal interests and aquatic tour and aquatic eco-tourism operators that include employment options be promoted.

Recommendation 32: Resources for Aboriginal Fishing Strategy initiatives should be sourced from new funding and not re-distributed from existing Department of Fisheries programs.

BACKGROUND

In 1993 the Commonwealth Resource Assessment Commission, as part of its Coastal Zone Inquiry, recommended the development of a National Aboriginal and Torres Strait Islander Strategy (ATSIFS). 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 outcomes of the Coastal Zone Inquiry.

Expanding on a pilot study initiated from ATSIFS program funding, the Department of Fisheries in Western Australia initiated a comprehensive Aboriginal Fishing Strategy (Strategy) for the State with funding assistance from the Aboriginal and Torres Strait Islander Commission (ATSIC), the Fisheries Research and Development Corporation (FRDC) and the Department of Indigenous Affairs (WA).

A Working Group, chaired by the Hon E M Franklyn QC, was established in 2000 to assist in the development of the Strategy and consultation with Aboriginal communities, organisations and individuals throughout the State. The Working Group was comprised of representatives of the following organisations:

- Aboriginal and Torres Strait Islander Commission (ATSIC);
- Commission of Elders;
- Conservation Council of WA
- Department of Fisheries;
- Department of Indigenous Affairs (DIA);
- Indigenous Land Corporation (ILC);
- Office of Aboriginal Economic Development (OAED);
- Recfishwest;
- Recreational Fishing Advisory Committee (RFAC);
- Western Australian Fishing Industry Council (WAFIC); and
- Western Australian Native Title Working Group (WANTWG).

Executive support was provided by the Department of Fisheries.

The strategy was developed in the context of:

- Sustainability of fisheries is of paramount importance and there is a growing need to protect and share fish resources for future generations.
- Native title determinations have, only to a limited extent to date, identified native title fishing rights.
- The strategy is a political process and outcomes must be consistent with the existing legal, social and political systems in Western Australia, but not directed to the exclusion of native title rights under the *Native Title Act 1993* (Commonwealth).
- There have been numerous reports initiated by state and federal governments relating to Aboriginal fishing which have involved the participation of Aboriginal people and which have, however, produced little in the way of real outcomes.

- The State Government has made a *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians*, released in October 2001. Fisheries legislation since 1905 has identified Aboriginal people as being generally exempt from various provisions of the legislation that applied to all others.
- Fish resources are used and valued differently in Western Australia by many different interests, including Aboriginal, conservation, recreational fishing, commercial fishing, aquaculture and aquatic charter.
- The term ‘Aboriginal person’ for the purpose of this report means any person who is of Aboriginal descent and who recognises him or herself as being Aboriginal, and is recognised as an Aboriginal person by the community.
- This strategy does not address management of turtles or dugongs. The strategy recognises “fish” in the same context as the *Fish Resources Management Act 1994* to mean “an aquatic organism of any species (whether alive or dead) and includes the eggs, spat, spawn, seeds, fry, larva or other source of reproduction or offspring of an aquatic organism; and a part only of an aquatic organism (including the shell or tail), but does not include aquatic mammals (e.g. dugongs), aquatic reptiles (eg turtles and crocodiles), aquatic birds or amphibians.

NEED

The Aboriginal Fishing Strategy was developed in response to growing needs to recognise and include customary fishing rights and interests within a sustainable fisheries management framework. The strategy also addresses broader needs and interests of Aboriginal people, for example, in economic development, employment and training. The following points explain some of these needs in greater detail.

An agreement between Aboriginal people and the Government of Western Australia

“There is a need for a new and just relationship between the Government of Western Australia and Aboriginal Western Australians.” (Government of Western Australia, 2002). This *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians*, includes recognition of Aboriginal people’s continuing rights and responsibilities as the first people of Western Australia, and that there is an enduring legacy of economic and social disadvantage that many Aboriginal people experience. A new and just relationship must inherently include improved recognition and inclusion of Aboriginal interests in the fisheries sector.

Lack of response to issues raised by Aboriginal people

Aboriginal people have been raising the issue of recognition and the opportunity to be included in the fishing sector for decades without any significant action on the part of fisheries authorities. Their aspirations and issues relating to the use of fish resources are contained in numerous reports including the Royal Commission into Aboriginal Deaths in Custody, Rural Industries Strategy, and the Resource Assessment Commission's *Coastal Zone Inquiry*.

International responsibility

The rights of Indigenous peoples to be free to practice and enjoy their own culture is recognized under the *International Convention on Civil and Political Rights*. The *International Convention on Biological Diversity* also requires governments to protect and encourage the customary use of biological resources, in accordance with traditional cultural practices." (Offshore water rights discussion booklet, ATSIC, Feb 2002)

Native Title

The *Native Title Act 1993 (Clth)* recognises, as have recent high court decisions, that fishing is an activity that may be the subject of a native title claim. There is a need to recognise the native title rights and interests of Aboriginal people relating to fish and fishing.

Fish resources successfully protected and managed in partnership with stakeholders.

The current fisheries management framework and fisheries legislation has not been developed with appropriate Aboriginal interest consultation or involvement. As a result, current fisheries legislation and management is inconsistent with Aboriginal fishing practices and does not necessarily influence the fishing behaviour of Indigenous peoples.

There is a need to identify and recognise Aboriginal fishing and develop appropriate management arrangements in partnership with Aboriginal people to ensure sustainability of fish stocks for future generations. Effective management arrangements and an understanding of the nature and extent of Indigenous use of and participation in the management of fish resources are required before allocations can be managed under an integrated management framework (see Fisheries Management Paper No. 165, November 2002).

OBJECTIVES

The project objective is to recommend to Government a strategy for:

- (ii)** the inclusion of traditional and cultural fishing practices within a framework of planned sustainable use of fish and fish habitat; and
- (iii)** greater involvement of Aboriginal people in the fisheries sector, including commercial fishing, aquaculture, the aquatic charter industry, and fisheries management;

consistent with the Department of Fisheries' statutory obligations to conserve, develop and share the fish resources of the State for the benefit of present and future generations.

The final Western Australian Aboriginal Fishing Strategy, the most comprehensive report of its kind in Australia, has been handed to the Minister for Fisheries ("the Minister"). This report comprehensively meets the project objectives and addresses customary fishing, involvement of Aboriginal people in fisheries management and opportunities for Aboriginal people to access fishing authorisations for economic development.

A further, unstated project objective is that the Aboriginal Fishing Strategy has been developed to achieve real and tangible outcomes for Aboriginal people. As such, each of the recommended strategies have been developed with two key issues in mind. The strategies have been based on the issues and aspirations voiced by Aboriginal people during consultation, and they have been developed to ensure they can be implemented within the political, economic and social structure that exists in Western Australia, an essential part of which is a sustainable fisheries management framework.

MEHODS

The Aboriginal Fishing Strategy Working Group assisted in the development of a consultation program designed to enable Aboriginal people to express the issues they have relating to fishing and put forward their aspirations and ideas for change.

Consultation was undertaken with Aboriginal individuals, organisations and communities throughout Western Australia from March 2001 to July 2002. During this process, advice and assistance was sought and received from organisations including the Department of Indigenous Affairs, the Aboriginal and Torres Strait Islander Commission (ATSIC) and Land and Sea Councils (Native Title Representative Bodies). An outline of consultation methods used during this period is outlined in Appendix 3.

Following this initial consultation process with Aboriginal interests, a draft Aboriginal Fishing Strategy report was developed with assistance and advice from the Aboriginal Fishing Strategy Working Group. In May 2003 the draft Aboriginal Fishing Strategy report ("the draft report") [Fisheries Management Paper No. 168] was released for public comment. The draft report contains significant discussion and rationale behind each of the proposed strategies. It was considered crucial to

provide the public with the reasoning behind proposals to assist understanding, promote informed debate and be accountable.

The Minister for Fisheries launched the draft report in Broome in May 2003. The associated public consultation process was promoted through media statements, radio interviews, articles in fisheries and Indigenous publications, and letters to relevant stakeholders.

Copies of the draft report were sent to Aboriginal organisations and communities, fishing industry organisations, conservation groups, Local Government, relevant State and Commonwealth Government Departments, Fisheries Departments and organisations nationally, and anyone who requested a copy. The draft report was also available electronically via the Department of Fisheries website.

The draft report was open for public comment, initially for 3 months, then for a further 3 months in response to requests from Aboriginal and other stakeholders to extend the process.

During the public comment period, meetings were held with Aboriginal community groups throughout Western Australia, including the engagement of an Aboriginal consultant to assist with consultation in the Kimberley and Pilbara regions. In addition, public meetings were held in several regional towns in the Kimberley in response to requests, and a National Indigenous Fishing Rights Conference was held in Fremantle in October 2003 at which there was significant local, national and international comment on the draft report.

In addition, during the public submission period, executive level meetings involving relevant State Government Departments and the Aboriginal and Torres Strait Islander Service (ATSIS) were held to develop an implementation strategy, including identification of resources and opportunities for collaborative approaches to proposed initiatives. As a result, a draft agreement was developed between ATSIS and the State Government relating to funding and support for several initiatives.

By the close of public comment in November 2003, over 40 written submissions to the draft report had been received in hardcopy or electronically via the e-mail established specifically to receive submissions. The submissions were received from individuals, academic institutions, Local, State and Commonwealth Government organisations, Aboriginal, conservation and fishing sector interests. Many of the submissions were provided by organisations that represent large numbers of stakeholders. A list of those who provided written submissions to the report is provided in Appendix 4.

The Aboriginal Fishing Strategy Working Group met on two occasions to consider the submissions received during the public submission period. The Aboriginal Fishing Strategy Final Report was prepared by the Chairman of the Working Group with assistance of the Working Group and forwarded to the Minister for Fisheries for consideration in May 2004.

RESULTS / DISCUSSION

Outcomes of consultation with Aboriginal Interests

Despite the differences in Aboriginal individuals, organisations and communities consulted along the State's 12000 km coastline and inland waters, there is significant consistency in the views expressed by Aboriginal people in Western Australia relating to fishing. Of particular significance is the commonly expressed statement that Aboriginal tradition recognises the need to protect and maintain fish stocks relied on by them. These views are also consistent with numerous reports from around Australia that have identified and compiled Aboriginal fishing issues as seen by Indigenous people.

The outcomes from consultation throughout the State have been summarised into a number of key issues and aspirations which reflect a general reluctance of many Aboriginal individuals to be quoted directly (traditionally, individuals can speak only for the country with which they are associated), and the similarity and consistency of issues and aspirations raised.

Greater detail about the issues and aspirations of Aboriginal people relating to fish, as identified in consultation, are contained in Appendix 5. However, Aboriginal fishing aspirations and issues commonly raised in consultations with Aboriginal interests across Western Australia may be summarised as:

- to be recognised by fisheries managers as more than just another stakeholder group and as having distinct and unique interests in fisheries including traditional ownership, traditional knowledge and customary stewardship responsibilities.
- to protect and maintain fish stocks from the effects of overfishing, pollution and habitat degradation.
- to have traditional knowledge recognised, respected and included within fisheries management and research.
- to have traditional fishing activities recognised.
- to have the importance of fish to Aboriginal people (including health, financial, educational, spiritual, cultural and ceremonial values) recognised by the broader community and fisheries managers.
- to be recognised and included in fisheries management through effective and appropriate consultation programs and representation within the Department of Fisheries.
- to have opportunities for involvement and employment in fisheries management, research, education and compliance programs.
- to be not subject to fishing rules inconsistent with customary practices so as to prevent Aboriginal people being penalised for exercising traditional fishing practices.

- to maintain and reclaim access to fish resources for food and other customary uses.
- to protect important cultural heritage places from fishing activities.
- to derive economic development and employment benefits from access to fishing authorisations.
- to have access to training, business planning and other resources that allow for Aboriginal interests to develop the necessary capacity to be competitive in the commercial fishing, aquatic tour and aquaculture industries.

Draft and Final Recommendations

The rationale and discussion surrounding the development of the draft recommendations (which is still relevant to many of the final recommendations) is provided in Appendix 6. The draft and final recommendations, and reasoning for any changes from draft to final, are contained in the following Table.

DRAFT AND FINAL RECOMMENDATIONS

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS (as numbered in Fisheries Management Paper No. 168)	Reasons for Change
<p>Final recommendation 1: the following key principles are to be maintained in the implementation of each of the aboriginal fishing strategy recommendations.</p> <ul style="list-style-type: none"> • Sustainability and biodiversity objectives are paramount. • Aboriginal people have continuing rights and responsibilities as the first people of western australia, including traditional ownership and connection to land and waters. • Strategies must be consistent with the objects and provisions of the <i>fish resources management act 1994 (wa)</i>, <i>pearling act 1990 (wa)</i> and the <i>native title act 1993 (clth)</i>. • Strategies must be consistent with a holistic, integrated approach to fisheries management and be accountable within ecologically sustainable development (esd) reporting frameworks. • Strategies must be practical and able to be implemented within the existing legal, political and social structures of western australia. 	<p>New Recommendation.</p>	<p>Ensures acknowledgement and emphasis of the key guiding principles that must be adopted as part of the report's recommendations.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 2: Customary fishing applies within a sustainable fisheries management framework to persons:</p> <ul style="list-style-type: none"> • of Aboriginal descent; • fishing in accordance with the traditional law and custom of the area being fished; and • fishing for the purpose of satisfying non-commercial personal, domestic, ceremonial, educational or communal needs. 	<p>Draft Recommendation 1: 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.</p>	<p>“...fishing in accordance with the traditional law and custom of the area being fished...” allows for flexibility in the definition of customary fishing in relation to how customary fishing will be applied in different regions of Western Australia. For example, the traditional law and custom in the Kimberley region may require permission from traditional owners, whereas the custom in the Noongar region may require a different approach. Issues relating to responsibility for determining who has the right to fish in accordance with custom in each area can be addressed at a regional or local level through further consultation. The recommendation is designed to define a starting point for further consultation.</p> <p>The term non-commercial is shifted in the text to clarify customary fishing as a non-commercial activity.</p> <p>Defining customary fishing in the FRMA should not diminish any existing Native Title rights. This must be a matter of care in the drafting of any relevant legislation.</p>
<p>Final Recommendation 3: 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, consistent with the traditional practice of those communities.</p>	<p>Draft Recommendation 2: 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.</p>	<p>Failure to recognise barter and exchange within the definition of customary fishing may limit existing rights and will be inconsistent with existing practice. It is not seen as high risk to recognise barter and exchange, as long as reasonable limits are placed around the definition of “limited and non-commercial”, which is an operational issue for the Department of Fisheries. Additional definition has been added to ensure barter or exchange remains consistent with traditional practice of the communities. The risk of not recognising this practice is higher than managing the existing practice.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 4: Commercial access to fish resources by Aboriginal people should be addressed:</p> <ul style="list-style-type: none"> • in recognition of restrictions placed on Aboriginal people to access fish resources for commercial gain since European settlement and the desire of many Aboriginal people to be involved in commercial fishing; and • separately to customary fishing in order to ensure practical and sustainable outcomes within the existing legal, political and social structures in Western Australia. 	<p>New Recommendation.</p>	<p>It is important to address indigenous access to commercial fishing opportunities separately to customary fishing, however it is also important to acknowledge the link between the two. This will assist aboriginal people’s understanding of the need to manage the two separately. Commercial access to fish resources by aboriginal people is addressed in subsequent recommendations.</p> <p>The separation of customary fishing and commercial fishing for the purpose of defining customary fishing is consistent with the National Indigenous Fishing Technical Working Group outcomes and was also raised in submissions.</p>
<p>Final Recommendation 5: 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 accountable within a sustainable fisheries management framework.</p>	<p>Draft Recommendation 3: 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.</p>	<p>Terminology changes have been made to clarify and emphasise the need for accountability within a sustainable fisheries management framework. Objections raised in public submissions relating to Aboriginal people only using “traditional” methods to undertake traditional fishing did not provide sufficient reason for changes and were not based on sound objective argument. Details around customary fishing arrangements should be addressed as part of further consultation with Aboriginal and other stakeholders.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 6: Customary fishing 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 access rights, practices and sustainability requirements.</p>	<p>Draft Recommendation 4: 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 <i>Fish Resources Management Act 1994</i> to create a separate reference to customary fishing and provide for the latter as a separate class of fishing activity.</p>	<p>There was broad support for the separation of customary fishing from other fishing activities.</p> <p>The second sentence in the recommendation has been removed, as the amendment referred to would be an outcome of the first part of the recommendation. The second sentence originally sought to specify a particular section of legislation that required amendment, however it is unnecessary at this time and was the basis for some confusion.</p> <p>For clarity, the word “access” has been introduced into this recommendation to better describe the nature of the right.</p>
	<p>Draft Recommendations 5,6,7 and 8 addressed detailed management proposals for customary fishing.</p>	<p>Draft recommendations 5,6,7 and 8 have been removed from the final report given the Minister’s media Statement of 24 December 2003 about addressing the detail of customary fishing after further consultation. Customary fishing needs to be addressed through further consultation on a regional/local basis to take into account the customary fishing variation between groups, develop principles and processes around fishing rules, catch monitoring/reporting and compliance.</p>
<p>Final Recommendation 7: Pearling legislation pertaining to <i>Pinctada maxima</i> to include capacity for the Minister for Fisheries to allow for the use of that pearl oyster species for customary fishing purposes.</p>	<p>Draft Recommendation 9: Pearling legislation pertaining to <i>Pinctada maxima</i> to include capacity for the Minister for Fisheries to allow for the customary use of that pearl oyster species.</p>	<p>Although subject of some criticism from the pearling industry, this recommendation was supported by the majority of other public submissions. The development of a new Pearling Act will allow for further input from all stakeholders on this issue.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 8: Educational information promoting and raising awareness in the broader community about customary fishing access rights, responsibilities, rules and practices must accompany changes to the management of customary fishing.</p>	<p>Draft Recommendation 10: 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.</p>	<p>For clarity, the word “access” has been introduced into this recommendation to better describe the nature of the right. The need for education is strongly supported in submissions.</p>
<p>Final Recommendation 9: The importance of access to fishing areas by Aboriginal people be recognised by Government. The State should 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.</p>	<p>Draft Recommendation 11: No Change.</p>	<p>There was general agreement with this recommendation in public submissions. This issue needs to be addressed across Government. Attention is drawn to the provision of section 211 of the <i>Native Title Act 1993</i> (Clth) in Government’s consideration of this recommendation.</p>
<p>Final Recommendation 10: Customary fishing be recognised as a separate, key fishing sector activity and as such afforded the same level of engagement in fisheries consultative and management processes as the recreational fishing sector and the commercial fishing sector.</p>	<p>Draft Recommendation 12: Aboriginal people be recognised as a separate, key fishing sector group and as such afforded the same level of engagement in fisheries consultative and management processes as the recreational fishing sector and the commercial fishing sector.</p>	<p>A change has been made to the text to emphasise that it is a fishing activity (customary fishing) being recognised in consultation processes and not Aboriginal people. This is a very important distinction to be made when addressing concerns from people about treating people differently because they are Aboriginal. The change to the text emphasises that customary fishing, recreational fishing and commercial fishing activities are different, as they are undertaken for different purposes, and an equivalent level of engagement should be afforded to each of the sector interests. Customary fishing does not necessarily apply to all Aboriginal people.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 11: Consultation between Government and Aboriginal interests be undertaken through:</p> <ul style="list-style-type: none"> ▪ an Aboriginal Fishing Management Advisory Committee (AFMAC), established under the <i>Fish Resources Management Act 1994</i> to provide advice to the Minister for Fisheries on Aboriginal fishing; and ▪ a dedicated body external to and independent of the Department of Fisheries, funded by Government to represent Indigenous interests in fisheries management processes; and ▪ utilising existing Aboriginal community and organisation networks where appropriate. 	<p>Draft Recommendation 13: Consultation between the Department of Fisheries and Aboriginal interests be undertaken by utilising existing Aboriginal community and organisation networks. In addition, a dedicated position external to the Department of Fisheries be funded to represent Indigenous interests on Fisheries Management Advisory Committees and in other fisheries management processes.</p>	<p>Very strong representation from Aboriginal Fishing Strategy Working Group members, and within several submissions, that there must be both an Aboriginal Fishing Management Advisory Committee <u>and</u> a separate body established to represent Aboriginal interests in fisheries matters.</p> <p>By adopting final recommendation 10, it must be accepted that the same level and type of consultative processes available to the recreational and commercial sectors are also offered to the Aboriginal sector. It is strongly recommended that Government show commitment to strong consultative processes by resourcing these forums as they are integral to the implementation and development of Aboriginal Fishing Strategy initiatives.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 12: 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, fisheries management decisions which may impact significantly on Aboriginal interests, particularly in inland and intertidal waters in the Kimberley region, should be made through co-operative decision making processes to be developed in consultation with stakeholders.</p>	<p>Recommendation 14: 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 <i>Fish Resources Management Act 1994</i> or <i>Pearling Act 1990</i> that may have a significant impact on Aboriginal interests in:</p> <p><i>Inland and intertidal waters in Aboriginal Fishing Area 1:</i> 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.</p> <p><i>Waters from low water mark to three nautical miles (or State waters) in Aboriginal Fishing Area 1:</i> 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.</p>	<p>Specifics of Aboriginal Fishing Areas 1 and 2 should be addressed through further consultation regarding the detail of customary fishing, however, the key principle of the recommendation remains. That is, for areas where decisions impact more significantly on Aboriginal interests, co-operative decision making processes (developed in consultation with all stakeholders) should be implemented.</p> <p>The reason for emphasis on the Kimberley is set out in Fisheries Management Paper No. 168.</p> <p>Significant support for this recommendation was registered in submissions.</p>
<p>Final Recommendation 13: Within any given fisheries allocation framework developed in Western Australia, customary fishing access rights should be given priority over all other fishing access, including commercial and recreational fishing.</p>	<p>Draft Recommendation 15: In relation to allocation processes, customary fishing be given priority over other fishing sectors including commercial and recreational fishing.</p>	<p>The word “access” has been added to clarify the nature of the right being addressed in the recommendation. The principle of priority is vital given the move toward integrated fisheries management.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
	<p>Draft Recommendation 16: 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.</p>	<p>The recommendation has been removed as it has become clear that it will be up to future allocation processes to determine how allocations will be made, being mindful of the principle of priority for customary fishing.</p> <p>Given the move toward integrated fisheries management it is not unexpected that the recreational fishing sector disagrees with priority allocations. However, priority for customary fishing over recreational and commercial fishing is not a new principle, and has been adopted in other countries such as Canada.</p> <p>Based on the results of consultation and results from the National Indigenous Fishing Survey (2003) it appears that the level of take by customary fishers in most fisheries is low compared to other sectors.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 14: Where possible, links should be created with recreational fishing creel surveys to obtain customary catch information. It is also desirable in the longer term to develop the capacity of Aboriginal people, particularly in remote communities, to monitor catch, undertake compliance and actively participate in the management of customary fishing.</p>	<p>Draft Recommendation 17: 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.</p>	<p>There is a requirement to obtain information of customary fishing catch information for integrated fisheries management purposes. At the National level there is current debate surrounding the level of detail to which customary fishing surveys need to go. Concern has also been raised about the methods and use of information from the National Indigenous Fishing Survey, which appears to have impacted Aboriginal people's willingness to be involved in future fishing surveys. It is recommended that specific customary fishing surveys remain on hold. An alternative in the short term is to gain limited information by building relevant questions into existing recreational creel surveys.</p> <p>Capacity building for Aboriginal communities to gather data themselves and address the ownership of the data is important for longer term information requirements.</p>
<p>Final Recommendation 15: Specific provision should exist, within an integrated fisheries management framework, to protect from other fishing activities, areas identified by the Minister for Fisheries as important for customary fishing.</p>	<p>Draft Recommendation 18: 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.</p>	<p>Protection of areas for customary fishing is essentially a spatial allocation issue to be addressed within an integrated fisheries management framework, noting the recommended principle of priority for customary fishing.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 16: Requirements relating to access to, and protection of, Aboriginal Reserves and sites pursuant to the <i>Aboriginal Affairs Planning Authority Act 1972</i> and <i>Aboriginal Heritage Act 1972</i> should be promoted amongst 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.</p>	<p>No change.</p>	<p>Generally supported by submissions.</p>
<p>Final Recommendation 17: Resources be identified and secured to assist Aboriginal interests to be involved in the development of marine resource use plans.</p>	<p>Draft Recommendation 20: 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.</p>	<p>The development of separate marine resource plans would be costly and resource hungry and a whole-of-Government approach to marine planning that involves Aboriginal interests should be encouraged.</p>
<p>Final Recommendation 18: The Department of Fisheries develop an Aboriginal employment policy that includes:</p> <ul style="list-style-type: none"> a. 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; b. 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 c. an Aboriginal Recruitment and Career Development Strategy. 	<p>No Change.</p>	<p>Any employment strategies must be consistent with Government policy and Equal Employment Opportunity principles.</p> <p>For consistency the term Aboriginal is used in place of the term Indigenous throughout the final recommendations.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Recommendation 19: To provide opportunities to build capacity of Aboriginal people in natural resource management the Department of Fisheries;</p> <ul style="list-style-type: none"> a. establish a Future Managers and Leaders program to enhance the ability for Aboriginal people to engage with Government and Industry in natural resource management, and increase employment opportunities; b. pilot an Aboriginal Fisheries Warden program in the Kimberley region to assess its practical viability, 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 c. consider utilising the National Indigenous Cadetship Program. 	<p>No Change</p>	<p>General agreement with recommendation in submissions.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 20: An Aboriginal community relations program be established by the Department of Fisheries with the following possible components:</p> <ul style="list-style-type: none"> a. the Volunteer Fisheries Liaison Officer (VFLO) program be promoted within Aboriginal communities and organisations to assist in gaining greater Aboriginal involvement in the program; b. an Indigenous Western Australian person be identified as a spokesperson for the Department of Fisheries to deliver sustainable fishing messages; c. where appropriate, fishing educational material such as signs include sustainable fishing messages from both Traditional Owners as customary stewards and the Department of Fisheries; d. existing fisheries messages and information be targeted at Aboriginal interests; e. existing schools programs developed by the Department of Fisheries be specifically targeted at Aboriginal children and Aboriginal community schools; and f. Aboriginal Fisheries Wardens (if established) be utilised to assist in liaison between the Department of Fisheries and Aboriginal communities. 	<p>No change.</p>	<p>General agreement with recommendation in submissions.</p>
<p>Final Recommendation 21: Cultural awareness training be made compulsory for all Fisheries staff that deal with the public.</p>	<p>Draft Recommendation 24: Cultural awareness training be made compulsory for all full time Fisheries Officers and Fisheries managers.</p>	<p>General agreement with the recommendation in submissions. The recommendation is also consistent with the <i>Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities</i> (Gordon Inquiry).</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 22: Joint or partnership fisheries management, research and education programs be identified, encouraged and developed with Aboriginal interests. Opportunities for the incorporation of traditional knowledge in these projects should be explored.</p>	<p>Draft Recommendation 25: 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/ventures, and whenever appropriate research programs explore opportunities for the exchange of information and incorporation of traditional knowledge.</p>	<p>Simplified and broadened to include management and education programs as suggested in the Department of Fisheries submission to the draft report.</p>
<p>Final Recommendation 23: An Aboriginal Fishing Program be developed in the Department of Fisheries to administer, co-ordinate and implement Aboriginal fishing initiatives. Government should resource this program, with additional funding assistance sought from external organisations to enhance implementation of key initiatives and provide more effective services to Aboriginal clients.</p>	<p>No change.</p>	<p>Generally supported within the submissions.</p>
	<p>Draft Recommendation 27: 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.</p>	<p>This is hypothetical so has been removed. It was also contentious amongst native title representative bodies.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 24: A co-ordinated 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.</p>	<p>No change.</p>	<p>Generally supported in submissions.</p>
	<p>Draft Recommendation 29: 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.</p>	<p>Generally supported in submissions, but the recommendation is unnecessary in this context as it is the role of other Government Departments such as the Office of Aboriginal Economic Development.</p>
<p>Final Recommendation 25: Any new allocation of commercial fishing authorisations to Aboriginal interests be administered through the open market process that has developed in Western Australia.</p>	<p>No change.</p>	<p>Strongly supported in submissions, including those from the commercial fishing industry.</p>
<p>Final Recommendation 26: An Aboriginal Fishing Fund (the Fund) be created by the State Government to assist in the purchase of tradeable fishing authorisations on the open market for the benefit of Indigenous Western Australians.</p>	<p>No change.</p>	<p>Strongly supported in submissions. It is noted that a draft agreement between ATSSIS and the State Government has been drafted.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 27: Contributions to the Fund be made by the State Government of Western Australia and the State seek contribution on a matching dollar for dollar basis from the Commonwealth. Additional opportunities for partnership funding should also be sought. At a national level, it is recommended that the State Government seek a review and amendment of the <i>Aboriginal and Torres Strait Islander Land Fund Act</i> to allow for the purchase of fishing related authorisations through the Aboriginal and Torres Strait Islander Land Fund.</p>	<p>Draft Recommendation 32: Contributions to the Fund be made by the State Government of Western Australia and the State 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 <i>Aboriginal and Torres Strait Islander Land Fund Act</i> to allow for the purchase of fishing related authorisations through the Aboriginal and Torres Strait Islander Land Fund.</p>	<p>Strongly supported in submissions. Indigenous Business Australia supports an amendment to <i>Aboriginal and Torres Strait Islander Land Fund Act</i>. Changes have been made to reflect recent decisions in relation to ATSIC and ATSSIS.</p>
<p>Final Recommendation 28: Principles for the Aboriginal Fishing Fund should include:</p> <ul style="list-style-type: none"> • Allocations from the Fund to be based on sound business principles. • The Fund should not be used to purchase capital or infrastructure, or to allocate grants. • A re-investment policy be included to strongly encourage Fund beneficiaries to re-invest in fishing authorisations. 	<p>Draft Recommendation 33: 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.</p>	<p>It is noted that a draft Aboriginal Fishing Fund structure has been developed, incorporating relevant components from similar programs managed by the Indigenous Land Corporation and Indigenous Business Australia. The allocation of funding based on sound business principles addresses equity issues relating to allocation. A re-investment scheme assists long-term ownership by Aboriginal interests.</p>
	<p>Draft Recommendation 34: Any Fund application process be as simple as possible while ensuring accountability and transparency.</p>	<p>While agreeing with the recommendation in principle, this issue will be addressed by the fund administrator.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
	Draft Recommendation 35: 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.	This recommendation has been incorporated into final recommendation 28, which contains a re-investment principle.
	Draft Recommendation 36: 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.	Purchasing operating equipment, infrastructure and other depreciating items depletes the Fund. Loan/Grant schemes are available through existing programs such as those offered through ATGIS.
<p>Final Recommendation 29: Access by Aboriginal communities currently available under the Aboriginal community fishing licence policy be replaced as soon as possible with explicit allocations in a manner which ensures sustainable benefits to the Aboriginal community.</p>	<p>Draft Recommendation 37: 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:</p> <ul style="list-style-type: none"> a. an immediate review of the mud crab fishery with a view to reallocating all commercial mud crab access to Aboriginal interests; and b. creation of a trochus fishery authorisation to secure access for historical participants in the fishery and formalisation of existing joint-management arrangements. 	<p>The replacement of “quasi-commercial” Aboriginal community licences with explicit allocations is supported by WAFIC. Detail around specific actions has been removed from the final recommendation as this should be determined by reviews of each of the fisheries affected by the Aboriginal community fishing licence policy.</p> <p>For example, any changes in the mud crab fishery should be subject to outcomes of a review to be undertaken in consultation with stakeholders. Commercial fishing industry operators and WAFIC did not support the re-allocation of mud crab entitlements.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 30: Programs to develop aquaculture involving Aboriginal interests in Western Australia be consistent with A <i>National Aquaculture Development Strategy for Indigenous Communities in Australia</i> (AFFA, 2001).</p>	<p>Draft Recommendation 38: Programs to develop aquaculture involving Aboriginal interests in Western Australia be consistent with A <i>National Aquaculture Development Strategy for Indigenous Communities in Australia</i> 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.</p>	<p>While collaborative approaches are supported, given the recent review of aquaculture in Western Australia the level of resources available within the Department of Fisheries for supporting and developing collaborative approaches is limited. Collaborative approaches between Aboriginal interests and industry are supported and should be promoted.</p>
<p>Final Recommendation 31: In relation to the aquatic charter industry;</p> <ul style="list-style-type: none"> • the Aboriginal Fishing Fund be available to purchase transferable aquatic tour operator authorisations for the benefit of Aboriginal interests; and • agreements between Aboriginal interests and aquatic tour and aquatic eco-tourism operators that include employment options be promoted. 	<p>Draft Recommendation 39: In relation to the aquatic charter industry;</p> <ul style="list-style-type: none"> ▪ 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 - <i>Assessment of Applications for the Granting, Renewal or Transfer of Fishing Tour Operators Licences and Aquatic Eco-tourism Operators Licences</i> be amended to include provision for the Executive Director 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. 	<p>The Department of Fisheries submission to the draft report recommended that there is no apparent need for amendment to the existing Ministerial Policy Guideline (MPG) 12, as the interpretation of MPG12 is currently broad enough for the Executive Director of Fisheries to give consideration to applications from 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.</p>

FINAL RECOMMENDATIONS	DRAFT RECOMMENDATIONS	Reasons for Change
<p>Final Recommendation 32: Resources for Aboriginal Fishing Strategy initiatives should be sourced from new funding and not re-distributed from existing Department of Fisheries programs.</p>	<p>New recommendation.</p>	<p>There was strong representation from Recfishwest and WAFIC on this issue. Funding is to be addressed by Government, but it is important to note the potential for negative feeling toward Aboriginal fishing programs if funds are re-distributed from existing Department of Fisheries programs. Re-distribution of existing funds will likely erode goodwill from affected fishing sector groups toward the customary fishing sector and adversely impact on existing programs.</p>

BENEFITS

Aboriginal interests are the primary recipient of benefits from this project, as it identifies Aboriginal fishing issues and aspirations, and proposes practical and responsible strategies for the inclusion and recognition of Aboriginal interests in the protection, use and sharing of fish resources in Western Australia.

Native Title holders and Government are recognising that many fishing related aspirations of native title holders are not likely to be achieved through litigious native title processes and can be achieved through fisheries legislation, policy and management arrangements. The Aboriginal Fishing Strategy is not intended to diminish in any way native title, but aims to give practical effect where possible to its recognition and promote the aspirations of Aboriginal people as identified in consultation with them.

Fisheries management benefits from having a level of clarity around customary fishing rights and interests, and a proposed policy framework within which it can address customary fishing issues. Management also benefits from strategies, such as consultation structures, to assist it to tackle the issues associated with managing and allocating customary fishing resources within a sustainable and integrated fisheries management framework.

Recreational, conservation and commercial interests benefit, as partners in the management of fisheries, from having customary fishing defined and managed within the existing fisheries management framework. It also provides mechanisms through which fishing sector interests can engage with customary fishing sector interests in resource sharing and other fisheries management issues of common concern.

The project benefits the broader community in terms of the social, employment, training and economic strategies for Aboriginal people. The opportunities provided to the Aboriginal community through these strategies and the associated social benefits flow across the Western Australian community.

PLANNED OUTCOMES

The planned outcome identified in the beginning of the Aboriginal Fishing Strategy process was broad community support for:

- specific management arrangements that recognise and include customary and subsistence fishing in an integrated and sustainable fisheries management framework;
- strategies and policy framework supporting the development of opportunities for Aboriginal people to be involved in the commercial fishing, aquaculture and

aquatic charter industries, including the integration of Government services for training, business development and market development; and

- strategies for inclusion of Aboriginal people in fisheries management, research and compliance.

The Aboriginal Fishing Strategy contains recommended strategies that specifically meet each of the three planned outcome areas (see Results section). Broad community support for the recommended strategies is evident by the level of support in the written submissions to the draft Aboriginal Fishing Strategy report. This support can be attributed to engaging effectively with the community and stakeholders in consultation programs, and providing appropriate rationale and options in the development of strategies.

ADOPTION

Full adoption of the report is subject to Government acceptance. However, outcomes from the Aboriginal Fishing Strategy development process, and the adoption of several of the recommendations of the Aboriginal Fishing Strategy as part of a phased implementation process approved by the Minister, is further evidence of how the projects outputs contribute to the planned outcomes. For example:

- As a result of the focus and involvement of Government and key stakeholders in the development of the Aboriginal Fishing Strategy in Western Australia, customary fishing is already at least notionally recognised as a separate and unique non-commercial fishing sector interest. There is currently a greater recognition of customary fishing rights and interests in the management of fish resources in Western Australia.
- Cross agency, executive level meetings have been held to address resourcing and co-operation issues relating to implementation of a number of the recommendations contained within the draft report. Following from this, the Western Australian Government has embarked on the development of an agreement with the Commonwealth through the Aboriginal and Torres Strait Islander Service (ATSIS) to enable funds for the purchase of commercial fishing authorisations for the benefit of Aboriginal people. This Aboriginal Fishing Fund, and a Traineeship program for Aboriginal Fisheries Managers and Wardens are also currently the subject of funding submissions to Western Australian Cabinet for 2004/05.
- An ongoing position has been funded within the Department of Fisheries to continue development and implementation of the Aboriginal Fishing Strategy. Funding has also been sourced from the Minister's

Development and Better Interest Fund to resource a pilot Aboriginal Fisheries Manager Trainee program.

- The process and methods undertaken in developing the Aboriginal Fishing Strategy has resulted in a co-operative approach to Aboriginal Fishing issues between fishing sector groups. An example of this is the Fishing Interest Group (FIG), consisting of Aboriginal, recreational commercial stakeholders. The Department of Fisheries provides technical support and advice, and the National Native Title Tribunal chairs the FIG. FIG was created to provide a response, from an Indigenous perspective, to the Integrated Fisheries Management Strategy, and the Aboriginal Fishing Strategy draft report. In addition, the FIG was responsible for the National Indigenous Fishing Rights Conference held in Fremantle in October 2003.
- The Department of Fisheries has developed significant relationships with Aboriginal individuals, communities and organisations as a result of consultation processes and engagement with Aboriginal groups. The Department has also developed significant expertise in the area of Aboriginal fisheries management and consultation. This expertise and relationships will be crucial in the successful implementation of Aboriginal fishing programs and initiatives.
- Customary fishing recommendations contained in the Aboriginal Fishing Strategy have been adopted at the national level as a national framework for customary fishing.

FURTHER DEVELOPMENT

Essentially the Aboriginal Fishing Strategy project is the initial phase of establishing an ongoing core fisheries management program within the Department of Fisheries in Western Australia. The recommendations provide clear guidance for Government to move forward with the recognition and inclusion of Aboriginal fishing rights and interests in Western Australia, and it is through the frameworks and policy developed in the Aboriginal Fishing Strategy report that the program will be further developed. The Western Australian Government is developing implementation plans and a number of projects have been initiated as part of a staged implementation process.

In addition, the WA Aboriginal Fishing Strategy is leading many areas of Aboriginal fisheries management in Australia, evidenced by the consistency between the customary fishing recommendations of the Aboriginal Fishing Strategy and the approach recently proposed by the National Indigenous Fishing Technical Working Group for a national framework for customary fishing.

One of the first issues to be addressed is the development of detail around customary fishing management, information collection and compliance. The Minister issued a media statement in December 2003 relating to the Aboriginal Fishing Strategy explaining that public comment to the draft report had closed, however detail around customary fishing would be developed further in consultation with Aboriginal and other relevant groups.

A priority for the development of the implementation phase of the Aboriginal Fishing Strategy is the establishment of an Aboriginal Fishing Management Advisory Committee to advise on implementation needs and priorities.

CONCLUSION

The Aboriginal Fishing Strategy is the most comprehensive report and set of strategies of its kind in Australia. The strategy addresses customary fishing, involvement of Aboriginal people in fisheries management and opportunities for Aboriginal people to gain access to the fishing sector for economic development, which addresses each of the project objective areas.

Key recommendations of the strategy include:

- Recognition of customary fishing as a separate, key fishing activity, to be managed separately to commercial and recreational fishing.
- Recognition of priority for customary fishing in allocation processes
- Define customary fishing
- Engagement of Aboriginal interests in fisheries management in consultation processes that afford (at least) the same level of recognition as the commercial and recreational sectors.
- Employment and Training programs to build capacity and employ Aboriginal people in fisheries / natural resource management.
- Development of a Fund to purchase commercial fishing authorisations on the open market for the benefit of Aboriginal people.

In addition, the inclusive process used to develop the Aboriginal Fishing Strategy has resulted in improved relationships and understanding of Aboriginal fishing issues by Government, fishing sector and community interests, which will be crucial in the implementation of Aboriginal Fishing Strategy recommendations.

The recommendations contained within the Aboriginal Fishing Strategy provide Government with a framework and set of strategies to assist government to meet the growing acknowledgement of indigenous fishing rights and responsibilities more pro-actively than anywhere else in Australia. These strategies will also help Government meet the rising expectations and the actions of indigenous Australians as they involve themselves more in the development of fisheries industries and issues surrounding fisheries resource planning, management and assessment.

Although the final recommendations of the Aboriginal Fishing Strategy have only recently been handed to Government at the time of writing this report, the Department of Fisheries and Minister have taken a pro-active approach to a number of the recommendations. For example:

- Ongoing funding for an Aboriginal Fishing Program Manager has been approved.
- Initial funding for an Aboriginal Trainee Fisheries Officer Program has been approved.
- An agreement between the Aboriginal and Torres Strait Islander Service and the Western Australian Government relating to joint funding of several initiatives has been drafted and funding arrangements are currently under consideration by both parties.

The Aboriginal Fishing Strategy project is the initial phase of establishing an ongoing core fisheries management program within the Department of Fisheries in Western Australia. The recommendations provide clear guidance for Government to move forward with the recognition and inclusion of Aboriginal fishing rights and interests in Western Australia, and they have been based strongly on the views and aspirations of Aboriginal people consulted throughout the State. The Western Australian Government is developing implementation plans and a number of projects have been initiated as part of a staged implementation process. These outcomes point to effective future recognition and inclusion of Aboriginal interests within fisheries management and legislation.

REFERENCES

Aboriginal and Torres Strait Islander Commission Environmental Policy (1994:5)

Aboriginal Lands Trust, Permit Information – for entry to Aboriginal lands and communities in Western Australia. Aboriginal Lands Trust Reserves Western Australia, Department of Indigenous Affairs. Perth, Western Australia.

Australian Bureau of Statistics (2002) 2001 Census. Commonwealth of Australia.

Buklis, L. S. (2002) Subsistence Fisheries Management on Federal Public Lands in Alaska. Fisheries, Bulletin of the American Fisheries Society, July 2002 – Vol 27 No. 7.

Department of Fisheries (2001), State of the Fisheries Report, 2000/2001. Perth, Western Australia.

Department of Fisheries (1998) Ministerial Policy Guideline Number 8, Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia. Perth, Western Australia.

Department of Fisheries (2000) 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. Perth, Western Australia.

Department of Fisheries (2003). Fisheries Management Paper No. 168. *Aboriginal Fishing Strategy: Recognising the past, fishing for the future*. Draft Report to the Minister for Fisheries by the Hon. E.M. Franklyn QC, Chairman of the Aboriginal Fishing Strategy Working Group. Government of Western Australia.

Department of Employment and Workplace Relations (2003) Indigenous Australian Recruitment and Career Development Strategy. Canberra, ACT. <http://www.dewr.gov.au/publications/indigenousStrategy/default.asp>

Environment Australia (2001) Fisheries Assessment Guidelines. Department of the Environment and Heritage. Commonwealth of Australia. <http://www.ea.gov.au/coasts/fisheries/assessment/guidelines.html>

Environment and Natural Resources Committee (2001) Inquiry into Fisheries Management. Government Printer for the State of Victoria. No. 125 Session 1999-2001. Parliament of Victoria, Melbourne.

Government of Western Australia (2001) Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians. Office of the Premier, Western Australia.

Government of Western Australia (2002) Consulting Citizens – A Resource Guide. Department of Premier and Cabinet, Perth, Western Australia.
www.ccu.dpc.wa.gov.au.

Government of Western Australia (2002) Focus on the Future: The Western Australian State Sustainability Strategy, Consultation Draft, Department of the Premier and Cabinet, Perth, Western Australia.
www.sustainability.dpc.wa.gov.au

Indigenous Land Corporation (2002) 2001-2006 National Indigenous Land Strategy.
www.ilc.gov.au

Integrated Fisheries Management Review Committee (2002) Report to the Minister for Agriculture, Forestry and Fisheries. Fisheries Management Paper No. 165, Department of Fisheries. 168 St Georges Terrace, Perth WA 6000.

Johnston, et al. (1991) *Royal Commission into Aboriginal Deaths in Custody*, Commonwealth Government of Australia.
(<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/#national>)

Kimberley Land Council, 2002. Comments to the Department of Fisheries Western Australia by Karajarri claimants with respect to a Pearl Oyster Farm Lease application. Prepared by the Kimberley Land Council 17 June 2002.

Law Reform Commission (1986) *The Recognition of Aboriginal Customary Laws*, Summary Report Number 31. Australian Government Publishing Service, Canberra.

Lee, C. and Nel, S. (2001) *A National Aquaculture Development Strategy for Indigenous Communities in Australia*. Agriculture, Forestry and Fisheries Australia, Canberra, ACT.

Minister for Agriculture, Forestry and Fisheries. Media Statement, 24 December 2003. *Aboriginal Fishing Strategy on track as talks continue*.

Smyth, D. (1997) *A Voice in all Places - Aboriginal and Torres Strait Islander Interest in Ocean Policy Development and Implementation*. A report commissioned by Environment Australia, Canberra, ACT.

West Coast Recreational Fishing Working Group (2000) Proposals for Community Discussion: *A Quality Future for Recreational Fishing On the West Coast*. Fisheries Management Paper Number 139.

FURTHER READING

Resource Assessment Commission (1993) Coastal Zone Inquiry. Australian Government Publishing Service.

Ecologically Sustainable Development Working Group (1991) Final Report on Fisheries.

Wright and Sparkes (2002) Integration of Native Title interests in fishing and coastal management in Western Australia. National Native Title Tribunal Research Report. Perth, Western Australia.

Department of (1996) National Aboriginal Fishing Strategy Discussion Paper. Commonwealth Coastal Policy

Resource Policy & Management (2001) Draft. Report on Indigenous Community Consultations in the South East Marine Region for the National Oceans Office.

ATSIC and the Department of Primary Industries and Energy (1997) National Aboriginal and Torres Strait Islander Rural Industry Strategy. http://www.atsic.gov.au/programs/Economic/Industry_Strategies/Rural_Industry_Strategy/default.asp

NSW Fisheries (2000) NSW Indigenous Fisheries Strategy Working Paper.

Sutherland, J. (1996) *Fisheries, Aquaculture and Aboriginal and Torres Strait Islander Peoples: Studies, Policies and Legislation*.

Smyth, D. (1999) Towards a Queensland and Torres Strait Islander Fisheries Strategy Final Report to the Queensland and Torres Strait Islander Fisheries Strategy for Queensland.

Tsamenyi and Mfodwo (2000) Towards Greater Indigenous Participation in Australian Commercial Fisheries: Some Policy Issues. ATSIC National Policy Office, Canberra.

APPENDIX 1

INTELLECTUAL PROPERTY

Valuable information has been gleaned from consultation with Aboriginal interests about their rights and interests regarding fish resources. This information has been given freely, has been provided to the public in the draft Aboriginal Fishing Strategy report, and will assist in the development of education information for the broader community and fishing sector interests.

Intellectual property is not applicable for this project.

APPENDIX 2

STAFF

Full Time

Ben Fraser (Principal Investigator)

Part Time

Hon E M Franklyn QC (Chairman)

Neville Poelina (Aboriginal Liaison)

Heather Brayford (Department of Fisheries)

Mike McMullan (Department of Fisheries)

Russel Dyson (Department of Fisheries)

CONSULTATION PROCESS

Draft Report

The consultation process undertaken with Aboriginal interests in Western Australia between March 2001 and September 2002 achieved a number of outcomes in addition to the identification of fishing issues and aspirations of Aboriginal interests throughout the State. It was used as an education strategy about fisheries management in Western Australia and key fishing messages such as fishing for the future, which was found to be consistent with Aboriginal custom. Further, it provided the Department of Fisheries with the opportunity to learn and generally increase its understanding and awareness of Aboriginal fishing. One of the most direct outcomes was the identification and development of strategies to improve consultation with Aboriginal interests about fishing matters.

The methods used to undertake consultation are summarised below.

ABORIGINAL FISHING STRATEGY WORKING GROUP

Representation:

- Independent Chairperson;
- Aboriginal and Torres Strait Islander Commission (ATSIC);
- Commission of Elders;
- Conservation Council of WA
- Department of Fisheries;
- Department of Indigenous Affairs (DIA);
- Indigenous Land Corporation (ILC);
- Office of Aboriginal Economic Development (OAED);
- Recfishwest;
- Recreational Fishing Advisory Committee (RFAC);
- Western Australian Fishing Industry Council (WAFIC); and
- Western Australian Native Title Working Group (WANTWG);

Executive support provided by the Department of Fisheries.

Terms of Reference

- to provide advice on development and implementation of recommendations for the Strategy, including legislative and policy changes;
- to identify commercial opportunities for Aboriginal communities through the use of fish resources, ensuring that maximum economic development, stock sustainability and biodiversity objectives of Fisheries WA are met;

- to encourage a collaborative approach across agencies/government and industry;
- to provide advice on the inclusion of social/cultural aspects of traditional fishing practices in a sustainable fisheries management framework;
- to assist in the development of funding strategies.

ABORIGINAL COMMUNITY CONSULTATION

Promoting The Consultation Process

1. Developed a promotional video to introduce the Aboriginal Fishing Strategy and communicate key messages at key points in the development of the Strategy.
2. Developed posters and brochures with information about the Aboriginal Fishing Strategy and existing fisheries messages and rules.
3. Radio was used to reach a wide Aboriginal and community audience, particularly in remote and regional areas. Examples include Warangarri, PAKAM, Goolarri, BRAACS, and ABC Radio.
4. Western Fisheries magazine, Aboriginal and local newspapers, Department of Indigenous Affairs publication and other relevant publications were utilised.
5. Media releases from the Minister for Fisheries.
6. Assistance and advice in promoting and arranging each of the meetings was sought from the Department of Indigenous Affairs, ATSIC Regional Councils, Land and Sea Councils (representative Native Title bodies), Commission of Elders, Community Development Employment Project (CDEP) organisations, Aboriginal Resource centres, TAFE centres and Aboriginal community councils where appropriate.
7. Meetings were held in culturally and socially neutral areas (such as Recreation Centres and Halls) where possible.

In addition, to assist Aboriginal people to gain an understanding about the Aboriginal Fishing Strategy, and allow people time to consider their responses, an example of the questions asked as part of the consultation process was forwarded to communities along with brochures, posters and videos prior to meetings. The questions were only designed as discussion starting points, however it appeared to give people an opportunity to focus their thoughts and result in frank discussions. A copy of the questions used to initiate discussions is provided below:

Topic 1 - Customary and subsistence fishing

1. Why is fishing important to you? What species are important ? How are they used (staple food, ceremonies, trade or art)?
2. Do you have your own rules about fishing? Eg species targeted, times/areas/seasons fished, species only taken for special purposes?
3. Do any of the State fishing rules stop you from fishing in traditional ways, practising your cultural activities or gathering food? If so, which rules are restrictive and why is that so?
4. What are your ideas for making customary fishing and Fisheries laws work together to make sure there are fish for the future?

Topic 2 - Involvement in management

1. What are some of the things about fishing and fisheries management you would like to know more about?
2. What is the best way to make sure Aboriginal people can have a say about fishing management? What consultation structure is best for this?
3. How can we involve you in research, education and compliance projects?

Topic 3 - Economic development

1. What are your ideas for fishing related businesses in your region?
2. What has stopped you from starting an aquaculture, commercial fishing or fishing tourism business so far?
3. What could be done to encourage fishing/aquaculture business development?

SCHEDULED COMMUNITY MEETINGS

One of the consultation mechanisms used to allow Aboriginal interests to give their ideas, issues and aspirations as they related to fishing, was a series of scheduled community meetings throughout the State. These meetings were held in the following locations:

Esperance
Albany

26 March 2001
2 April 2001

Bunbury	9 April 2001
Manjimup	10 April 2001
Mandurah	30 April 2001
Metropolitan	1 May 2001
Moora	2 May 2001
Geraldton	5 June 2001
Carnarvon	11 June 2001
Denham	12 June 2001
Roebourne	7 May 2002
Cossack	7 May 2002
Port Hedland	8,9 May & 21 May 2002
Bidyadanga	2 May 2002
Broome & Dampier Peninsula (Liaison Officer)	April, May, June 2002
Derby/Mowanjum	23 May 2002
Fitzroy	22 Oct 2001, 27,28 June 2002
Kununurra	24 Oct 2001 & 1,2 July 2002
Wyndham	25 Oct 2001 & 3 July 2002
Kalumburu / Oombulgurri	23 Oct 2001

One of the challenges associated with scheduled meetings is that unanticipated events can often interfere with meeting time-frames. Unfortunately one of the most common issues is a death in the community and resultant sorry-time that will affect attendance at meetings. In addition, community issues such as health, education and funding may take priority and any meetings called in relation to these issues may also affect attendance at meetings.

UTILISING EXISTING NETWORKS

In addition to scheduled community meetings consultation was undertaken through existing Aboriginal community and organisation networks. This process was often more effective than consultation via scheduled meetings. Examples of some of the networks used include:

- DIA Local Area Co-ordinators
- ATSIC Regional Councils eg Yamitji Regional Council meeting
- Native Title representative bodies (Land and Sea Councils) assisted with meetings with native title claimants
- Commission of Elders eg State COE meeting
- ATSIC portfolio groups, eg economic development portfolio
- Native title working groups, eg Malgana working group, Denham
- Traditional Owners, eg Balangarra TO's at Kulumburu
- Noongar Land Council (now South West Land and Sea Council)
- Native Title Unit (Premier and Cabinet)
- Office of Aboriginal Economic Development
- CDEP organisations, eg Southern Aboriginal Corporation
- TAFE, eg Bunbury and Derby TAFE centres

- Aboriginal Community Councils
- Aboriginal Economic Development organisations eg KREAC
- Many Aboriginal people were contacted, or contacted the Working Group, and participated in consultation in communities, while fishing and in other locations that were most conducive to discussions.

ABORIGINAL LIAISON OFFICER

In the Kimberley and Pilbara, an Aboriginal Liaison Officer was employed through the Department of Indigenous Affairs to assist with consultation for the Aboriginal Fishing Strategy. The Liaison Officer assisted tremendously in improving access to Aboriginal groups, organising meetings through knowledge of local events and people, providing advice about cultural protocols and giving the consultation process a greater level of credibility.

INTERSTATE CONSULTATION

Consultation with other states consisted of a working group member visiting other states to gather information and networking with other Australian and overseas fisheries organisations dealing with indigenous fishing issues by the executive officer.

MANAGING ABORIGINAL COMMERCIAL FISHERIES

During the management of trochus, mud crab and beche-de-mer fisheries involving Aboriginal communities, a range of practical issues were raised and identified, and aspirations, particularly relating to financial independence, self determination and the practical difficulties facing Aboriginal people trying to establish themselves in competitive fishing businesses.

ABORIGINAL FISHING STRATEGY PROJECT OFFICER

Located in the Broome Office of the Department of Fisheries, having an identified position within the Department of Fisheries, and particularly after first visits to communities and Aboriginal groups. Aboriginal people had a contact point within the Department of Fisheries and could voice concerns, ask questions about any aspect of Fisheries and generally co-ordinate consultation process with Aboriginal interests. In addition, the Project Officer was able to visit communities and meetings as time and resources permitted. As a result of this dedicated position, the increased relationships that accrued as a result many issues and aspirations were raised individually with the Aboriginal Fishing Strategy Project Officer, also the Executive Officer of the Aboriginal Fishing Strategy Working Group.

REGIONAL REFERENCE GROUPS

Regional reference groups were established and initial meetings were held for the Goldfields/Esperance, Great Southern, South West, Peel, Mid West and Gascoyne regions. The reference groups were initially established to assist with regional specific strategies that could be incorporated into the State-wide strategy. However, the regional reference groups were disbanded as it became clear that there were consistent issues across the State and regional input was able to be effectively gained without the need for administration of regional groups.

CONSULTATION WITH OTHER INTERESTS

Consultation with Department of Fisheries Staff was undertaken to ensure strategies were consistent with the *Fish Resources Management Act 1994*. In addition the Chairperson of the Aboriginal Fishing Strategy Working Group met with the Chairperson of the Integrated Fisheries Management Strategy to ensure consistency between the Strategies. National Native Title Tribunal staff and Native Title Unit staff at the Department of Premier and Cabinet were consulted to gain advice on Native Title matters. Position papers from Western Australian Fishing Industry Council, Recfishwest, WA Aboriginal Native Title Working Group and Conservation Council of WA were also received.

WRITTEN SUBMISSIONS

Written submissions to Fisheries Management Paper No. 168 were received from:

Alan Fraser
Alan Wilson
Bruce Hawkins
Geoffrey Bury
Glen Shaw
Graham Cooper
Grahame Garrie
John Blackman
Lindsey Linfoot
Mick Leon, Indigenous Fisheries Forum Group (NSW)
Murray Brown
Peter Powell
R J Rowland
Rod Cavanagh
Rose Holden
Steve Carrigg
W E Whitnell

Combined submission from Chris Coomer, Dwayne Gillespie, Peter Baumgarten, Darren Baumgarten, Priscilla Black, Melissa Black, Renee Simpson, May Barron, Peggy Slater, Leonie Murphy, Honey Lockyer, Christine Black, Cheryl Brown, Carrie Brown, Susie Sampson, Johnny Francis, Daniel Brown, Maureen Kelly, Monique Simpson.

Aboriginal and Torres Strait Islander Service (ATSIS) State Office – Western Australia
Australian National University, Centre for Aboriginal Economic Policy Research
City of Perth
Conservation Council of WA
Department of Fisheries, Western Australia
East Kimberley Regional Recreational Fishing Advisory Committee
Esperance / Goldfields Regional Recreational Fishing Advisory Committee
Goldfields / Esperance Development Commission
Indigenous Business Australia
Indigenous Land Corporation
Kimberley Charter Boat operators Association
Kimberley Land Council
Marine Parks and Reserves Authority

National Native Title Tribunal (Fishing Interest Group)
Neville Poelina, UPTUYU Consultancy – Kimberley and Pilbara Consultation
Report
Pearl Producers Association Inc.
Pilbara Regional Recreational Fishing Advisory Committee
Recfishwest
Recreational Fishing Advisory Committee (RFAC)

ABORIGINAL PEOPLE'S ASPIRATIONS AND ISSUES

Consultation with Aboriginal individuals, communities and organisations throughout Western Australia resulted in the following consistently raised key issues and aspirations.

Customary Fishing

How fish are valued

- Fish are extremely important to most Aboriginal people as a food source, particularly in more remote areas and communities where alternative food supply is limited.
- Fish are caught to supplement the diet not only for health reasons but also for economic reasons as many Aboriginal people, particularly those in remote communities and regional areas, are on a very low income. Fishing restrictions can mean Aboriginal people have to buy fish or alternative food, affecting their economic situation.
- Fish and fishing are an important component of many cultural, ceremonial and social events. Cultural and social events involving fish can vary from entertaining visiting relatives to a cultural ban on eating red meat following a death in the family. During these times, the demand on fish and fishing becomes stronger. Some of what are viewed by Aboriginal people as cultural events have evolved since pre-colonisation and are not restricted to 'traditional' cultural events.
- Fish and fishing for many Aboriginal groups are important parts of the education process and passing on information to successive generations. Fish and fishing are vital tools for teaching and practising traditional ways. Some current fishing rules can prevent Aboriginal people from practising traditional fishing activities and passing on cultural knowledge. For example, fish traps, poisons and spears, which are acceptable in traditional fishing, are illegal in certain situations under fisheries legislation.
- Sharing of fish is important socially and communally. Catches of fish are shared among the family, extended family and others who are not able to fish for themselves, such as the elderly. Sharing often extends to barter and exchange of fish for other items and other food sources within Aboriginal communities.

Access

- Access to fish by Aboriginal people is important for dietary and health reasons. Many Aboriginal groups expressed concern that the loss of access to fish is affecting Aboriginal people's health, as alternative food is less healthy.
- Access to fishing areas has been reduced, particularly in respect of national parks and pastoral properties and is a major concern to Aboriginal people.

Sustainability

- Fish are not wasted. Catching more fish than required for immediate use is contrary to customary practices. Everything that is caught is used. In many cases everything is eaten except the bones. Many Aboriginal people are frustrated when they find fish carcasses left behind by recreational fishers with only fillets taken.
- Aboriginal people express concern about commercial and recreational overfishing and its impact on sustainability of fish stocks, and their ability to catch fish for customary purposes, particularly as customary fishing is generally restricted to fishing from shore, as many Aboriginal people cannot afford boats.

Fishing Rules

- Customary fishing should apply to everyone who is of Aboriginal descent and recognised by the Aboriginal community as having the right to fish in a specific area, which may include Aboriginal people from other areas who are recognised by traditional owners. Cultural protocols relating to respect for traditional ownership and seeking permission to fish in certain areas continue to apply.
- Aboriginal people express an understanding of the need for fishing rules, but are frustrated as the current rules are designed to address recreational fishing issues and do not accommodate customary fishing practices or needs of Aboriginal people.
- Customary fishing should be given appropriate consideration before any new fishing rules are made.
- The principle of size limits (returning small fish) and protection of breeding fish is consistent with customary fishing practices.

- Many Aboriginal people are not aware of the current fishing rules and are unclear about their rights under fisheries legislation. Many believe the current fishing rules were designed for other people, that Aboriginal people were not consulted, and that the rules are not consistent with their needs. As a result, they continue to fish in a manner appropriate to their needs, regardless of fishing legislation.
- Many customary fishing rules are still observed, particularly in the north of the State. Customary fishing rules, such as fishing seasons, continue to exist. Those Aboriginal people who are aware of fishing rules generally acknowledge rules are required, but feel the current rules are not appropriate.
- Bag limits can restrict individuals or small groups of Aboriginal people from catching enough to feed their families, extended families, the elderly and for cultural events.
- Netting is important for many Aboriginal groups throughout the State on occasions when customary activities require larger numbers of fish (often mullet).
- Seasonal closures as legislated are not necessarily consistent with fishing seasons as practiced by Aboriginal people. Some seasonal closures (in particular, marron) restrict Aboriginal people from fishing when it is appropriate to satisfy educational, social and cultural fishing requirements.
- Aboriginal people can become caught between customary obligations and fisheries law. For example, a single person can be nominated by community elders to collect fish for a large ceremony, requiring more fish than is allowed by one person under the existing recreational fishing bag limit structure.

Perception and Interaction

- Although in the main Aboriginal people claimed they tend to fish in areas away from others, concern has been raised about the impact of different rules for customary fishing on public perceptions of Aboriginal people. There is a concern that without proper education of the broader community there may be a negative impact on Aboriginal people from changes in fishing rules that recognise customary fishing.
- Fisheries officers approaching Aboriginal people when fishing can cause concern for cultural reasons. Aboriginal people feel they should be free to fish without questions within their own traditional country. Aboriginal people feel they should be able to be left alone and not have to prove their rights to fish in a manner that is customary.

Involvement in Management of Fisheries Resources

- Aboriginal people have expressed a strong interest in being recognised and involved in management of fishing in their local areas, consistent with their customary responsibility as “stewards” of natural resources. Traditional owners still practice their cultural obligation to look after the country, which includes the management of natural resources. Aboriginal people believe that as custodians they must be recognised and included in fisheries management not just as stakeholders, but also as having additional, unique rights and interests.
- Aboriginal people expressed a willingness to work with Government through a partnership approach to fisheries management that recognises customary marine tenure and customary stewardship responsibilities.
- Consultation and involvement in the decision making process by Aboriginal people should reflect traditional ownership rights and responsibilities.
- Aboriginal rights relating to the sustainable use of fish resources must be clarified.
- Aboriginal people require recognition that although they have been dispossessed of lands negatively affected by development and have had access to fish resources reduced, they have retained traditional knowledge and links to fish and fishing.
- Aboriginal people express great concern about the effects of pollution and overfishing as it has affected areas in which they have customary stewardship roles.
- Traditional owners in the Kimberley want resources to undertake marine planning processes for sea country so as to be strategic and proactive in providing their views to Government and fishing stakeholders, instead of reacting to the numerous requests by Government and industry interests for input on various applications and issues. Aboriginal people are particularly concerned about the apparent lack of a strategic approach to assessing pearling leases and charter fishing operations.
- An Aboriginal fishing unit should be established within the Department of Fisheries to represent, address and implement Aboriginal fisheries issues, reflective of the need to recognise Aboriginal interests as a unique user group.
- Consultation needs to be improved and should utilise existing networks established by, for example ATSIC, Aboriginal community councils and organisations, Native title working groups and representative bodies and the

Commission of Elders, but still requires meetings in person between Fisheries Department staff and affected Aboriginal interests in some cases.

- Aboriginal individuals cannot speak for other Aboriginal people's country outside of their own.
- There is a diverse range of Aboriginal interests, organisations and communities throughout the State. Even inter-generational differences are uniquely diverse. Aboriginal people cannot be considered as a homogenous sector for the purpose of managing fisheries.
- Information about fishing rules and fisheries management is not effectively targeted toward Aboriginal people.
- Aboriginal people would like to see more opportunities for Aboriginal people to be trained and employed by the Department of Fisheries as Aboriginal Fisheries Officers, Honorary Fisheries Officers and wardens.
- There is an identified need for cross-cultural training of Department of Fisheries staff, particularly Fisheries officers who are likely to have greater contact with Aboriginal people.
- Concerns relating to the effect of aquatic charter industry and commercial fishing operations on Aboriginal communities and cultural sites have been raised. Examples include the impact of Kimberley Prawn Fishery on the community in Napier Broome Bay as a result of by-catch washing up and fishing in particular areas, and aquatic charter operators taking tourists to culturally-sensitive areas and not obtaining permission required for access to Aboriginal reserve land.

In addition, native title claimants have raised a number of issues relating to their involvement and recognition in management of fish resources within their claim areas. For example, in comments to a Pearl Oyster Farm Lease application by Karajarri claimants prepared by the Kimberley Land Council 17 June 2002, the following aspirations and issues were raised:

“Under traditional law and custom, traditional owners have a right to make decisions about the use and enjoyment of the area (within the native title claim).”

“The Department of Fisheries ought to acknowledge that native title claimants have the right to make decisions about the use and enjoyment of their sea country by commercial interests.”

“Native title claimants are concerned that, contrary to their entitlement under traditional law and custom, they will not be entitled to receive any income or

benefits from fishing-related business activities (e.g. commercial fishing, pearling or aquaculture)."

"Under traditional law and custom, traditional owners have the right to maintain and protect places of importance within the native title claim area."

Economic Development

- Issues faced by many Aboriginal people trying to establish themselves in the fishing sector include:
 1. High entry costs combined with funding shortages to start projects;
 2. A need for information and training in the legal, business planning, technical and marketing aspects of fisheries required to get established in the industry; and
 3. A feeling that they are not competing for access to fisheries on a level playing field.

- Aboriginal people often have difficulty in meeting funding criteria for community based projects that can only demonstrate social benefits in the short term, even if potential for economic outcomes in the longer term is identified. These projects are often smaller scale and community driven projects which, given resources, can initiate the incentive and ownership that is required to develop economically profitable projects in the longer term.

- In addition, native title interests have in some areas of Western Australia, claimed:
 1. The right to trade in resources in the area; and
 2. The right to receive a portion of any resources taken by others from the area.

More specifically, commonly raised Aboriginal interests and aspirations have been categorised below into pearling and aquaculture, aquatic charter and commercial fishing.

Pearling and Aquaculture

- Many Aboriginal people and communities have expressed a strong interest in developing aquaculture opportunities.

- Many Aboriginal groups have expressed an interest in using aquaculture to meet social objectives in the first instance, such as providing food for the community, replacing diminished fish stocks and providing options for young people to remain in the communities, providing an occupation and training opportunities.

- There appears to be a lack of understanding by many Aboriginal groups who have not had experience with aquaculture, of the long term nature, resources and effort required for many aquaculture projects.
- Aboriginal aquaculture development and assistance is being provided to Aboriginal communities in the Kimberley through the Kimberley Aboriginal Aquaculture Corporation.
- Aboriginal communities do not have the resources to develop large or medium scale aquaculture ventures without funding assistance or outside investment for such projects.
- Aboriginal communities have expressed interest in particular species for aquaculture based on familiarity with those species or even cultural links. However, these species may not be suitable for marketing or technical reasons.
- Concerns have been raised about meeting aquaculture research for species Aboriginal people are interested in.
- Aboriginal communities are very concerned about the encroachment of other pearling and aquaculture leases/licences that may exclude them from starting aquaculture projects in the future.

Aquatic charter

- Aboriginal interests have expressed concern that the recently developed aquatic tour licences may become limited and Aboriginal interests may be shut out from opportunities to become involved in the industry, as has happened with the commercial fishing industry.
- There are several existing Aboriginal tourism ventures that involve fishing.
- Aboriginal people have identified and feel they have a unique opportunity to provide fishing related tours that incorporate cultural information and information about 'country'.

Commercial Fishing

- Aboriginal people want access to commercial fishing licences to meet both economic development and social objectives including employment and self determination. Aboriginal groups have commonly voiced their strong links to fish resources and to many remote communities commercial fishing is one of the few opportunities available for economic self determination.

- Aboriginal people want a program for access to commercial licences to ensure they can gain economic benefit from the fish resources to which they have traditional ownership and responsibilities to protect.
- The cost of commercial fishing licences are too high for the vast majority of Aboriginal people or communities.
- Aboriginal communities that have been granted commercial fishing authorisations have learned that training, business planning and resources to obtain equipment are necessary for fishing ventures to succeed.
- Some larger Aboriginal communities have requested commercial licences to catch fish to sell only within the Aboriginal community and meet communal fishing needs.
- Aboriginal community groups have expressed the need to formalise and secure access rights around Aboriginal community fishing authorisations in order to be able to plan and take a long term view to the fisheries.

**RATIONALE AND DISCUSSION SURROUNDING DRAFT
RECOMMENDATIONS - from the Aboriginal Fishing Strategy Draft Report
[Fisheries Management Paper No. 168]**

2.0 Customary Fishing

2.3 Options

2.3.1 Defining Customary Fishing

If customary fishing is to be recognised in fisheries legislation and policy, it must be defined.¹ The following definition has been developed consistent with outcomes of consultation and with the *Native Title Act 1993*.

Customary fishing:

a. Applies to persons who are of Aboriginal descent; and

Aboriginal descent is consistent with definitions of Aboriginal persons contained in the *Native Title Act 1993* (Section 253) and the *Aboriginal Affairs Planning Authority Act 1972* (Section 4).

b. Who are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs; and

Although Section 211 of the *Native Title Act 1993* is not directly relevant to customary fishing, it gives particular definition to the purpose of fishing for instances where certain native title rights and interests are to be preserved. This includes, “for the purpose of satisfying their personal, domestic or non-commercial communal needs.” Consultation also identified ceremonial and educational purposes with customary fishing. Ceremonial purposes may include the use of fish in a range of cultural events, and educational purposes relates to fishing as a means to pass knowledge, culture and other information on to future generations. Spiritual links of individuals to particular fish species from birth (totem species) were also identified as an important part of Aboriginal culture. However, this has not been included as a customary fishing purpose as individuals will typically not be permitted to take species to which they are spiritually linked.

¹ Because the *Native Title Act 1993* overrides the *Fish Resources Management Act 1994* to the extent of any inconsistencies, the legal boundaries (and definition) of customary fishing by native title holders can only be established through native title processes. These boundaries have not yet been tested.

c. Who are accepted by the Aboriginal community in the area being fished as having a right to fish in accordance with Aboriginal tradition

Expressed by many Aboriginal people throughout consultation was the position that customary fishing within a specific area applies to persons the Aboriginal community determines have the right to fish under traditional law and custom within that area. This includes cultural protocols relating to gaining permission to fish in particular areas. Aboriginal people have stated in consultation that the decision as to whom customary fishing applies is a cultural/customary issue that is currently addressed within the Aboriginal community, and should continue to be addressed in this manner. For this reason, and inherent difficulties relating to enforcement, the question of acceptance by the Aboriginal community to fish in a specific area is not incorporated into the legal definition of customary fishing.

Recommendation 1: 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. Addressing 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.

Barter and exchange within Aboriginal communities was found to exist during consultation. Consistent with findings of the Commonwealth Law Reform Commission's report number 31, *The Recognition of Aboriginal Customary Laws*, it is recommended that customary fishing for the purpose of satisfying personal, domestic or non-commercial communal needs should recognise the elements of barter or exchange as long as it occurs within or between Aboriginal communities. However, trade, exchange or sale other than within or between Aboriginal communities should be regarded as a commercial activity and be subject to laws of general application.

The concept of barter is more specifically described in the *Alaska National Interest Lands Conservation Act* (ANILCA). As used in this Act, the term 'barter' means the exchange of fish or wildlife or their parts, taken for subsistence uses-- (a) for other fish or game or their parts; or (b) for other food or for non-edible items other than money if the exchange is of a limited and non-commercial nature.

Recognition of Aboriginal people's role and aspirations in the commercial fishing (and related) industries is recognised and addressed later in the report.

Recommendation 2: 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.

2.3.1.1 *Customary Fishing Methods*

A commonly asked question about customary fishing is “does customary fishing mean that Aboriginal people can only use traditional fishing methods?”

Aboriginal culture is continually evolving and Aboriginal people are adapting to a rapidly changing world. For example, monofilament nylon nets are now used in place of traditional nets made from species of vine and other bush fibres. Because Aboriginal people are using fishing methods or gear that have been developed in the last 50 years does not necessarily mean that they are not fishing for a customary purpose.

Customary fishing is more concerned with the intent of the activity (as described in the definition of customary fishing), rather than methods. Outcomes of consultation clearly identified the intent of customary fishing as being consistent with, and/or based on, sustainability principles, reflective of customary responsibilities felt by Aboriginal people to protect and manage resources within traditionally owned areas of land and water.

Traditional fishing techniques such as the use of fish traps and poisons can be very effective in catching fish, even more so than modern fishing techniques such as SCUBA, monofilament nets or recreational fishing boats with fish-finding technology. Because a fishing method or gear is ‘modern’, it is not a reason to preclude that gear or method from an adaptive culture. However, the use of fishing methods or gear that are destructive or threaten sustainability of fish stocks, regardless of whether they are traditional or modern, is a sustainability issue that must be addressed through responsible management of fish resources.

Responsible management of fish resources will also necessitate the total protection of species that are considered threatened or endangered. The effect of that need is addressed later in this document. In addition, given that customary fishing is about the intent of the activity, there seems no reason to protect introduced or feral fish species from customary fishing on the basis that Aboriginal people have not historically targeted those species.

Recommendation 3: 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.

2.3.2 Recognition of Customary Fishing in Fisheries Management

Evident by its definition, customary fishing is different in purpose to other forms of fishing such as commercial and recreational. Concerns raised by Aboriginal people relating to customary fishing management primarily result from customary fishing being managed as, and not distinguished from, recreational fishing. A clear legislative and policy separation of customary fishing is required to address these issues and to develop appropriate management arrangements that reflect existing customary fishing rights and practices, and sustainability requirements.

2.3.2.1 Why recognise and manage customary fishing differently to other forms of fishing?

Fishing by Aboriginal people has always been recognised in Western Australian fisheries legislation, separate to recreational fishing. The current recognition is limited to Aboriginal people being generally exempt from holding a recreational fishing licence if they are fishing in accordance with continuing Aboriginal tradition and if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.

The *Native Title Act 1993* (Commonwealth) acknowledges the right of Aboriginal people to fish in accordance with native title, which can include customary fishing. The *Native Title Act 1993* also overrides any inconsistent State fisheries legislation. This means that customary fishing that is undertaken in accordance with native title can be legally practised in some cases outside of current State fisheries legislation. Fishing is a claimed traditional right among many Aboriginal people in Western Australia.

The right of indigenous peoples to be free to practice and enjoy their own culture is recognised under the *International Convention on Civil and Political Rights*. The *International Convention on Biological Diversity* also requires governments to protect and encourage the customary use of biological resources, in accordance with traditional cultural practices.

The Government of Western Australia has made a commitment to Aboriginal people of Western Australia, entitled *A New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians*. This commitment recognises that Aboriginal people have continuing rights and responsibilities as the first peoples of Western Australia, including traditional ownership and connection to land and waters. These rights inherently incorporate the right of Aboriginal people to continue to fish in a manner customary to them.

Fisheries are managed successfully when they are managed in partnership with stakeholders to develop rules that have strong community support. Current fisheries management, designed to address recreational fishing issues, does not address customary fishing requirements. Fishing rules that do not recognise customary fishing needs are likely to result in a lack of credibility with Aboriginal interests and diminish Aboriginal community stewardship in respect to rules developed by fisheries authorities.

The intent of customary fishing is different to recreational or commercial fishing. The recreational fishing ethic is to “catch a feed for oneself and ones family, and for a variety of reasons enjoy the experience along the way”. Commercial fishing has economic objectives. Customary fishing is intrinsic to Aboriginal peoples’ identity and culture, is an important food source and is important to Aboriginal people for social, educational, ceremonial and spiritual reasons.

Continuing to manage customary fishing through rules designed for recreational fishing means that any future change to fisheries legislation to address recreational fishing issues will likely continue to be inconsistent with customary fishing. This may result in continued challenges and non-compliance with recreational fishing rules.

Native title holders are not necessarily subject to recreational fishing rules. It is hoped that native title fishing rights relating to customary fishing will be able to be incorporated into a sustainable fisheries management framework by recognising customary fishing.

2.3.2.2 Is there any risk of over exploitation by recognising customary fishing?

Sustainability of fish stocks is paramount and customary fishing should only be recognised within sustainable fishing parameters.

Recognising customary fishing within fisheries management does not create a new form of fishing, but identifies an existing fishing practice and purpose. Aboriginal people consulted were generally very candid about the fact that they do not presently fish in accordance with the existing recreational fishing rules if those rules are inconsistent with customary fishing needs. The recognition of customary fishing will allow for the development of more appropriate management for the activity that protects customary fishing while maintaining sustainable levels of fishing.

Aboriginal people make up 3.2 per cent of the population in Western Australia, of which 40 per cent are under the age of 15 (Australian Bureau of Statistics, 2001 Census). Assuming that 50 per cent of Aboriginal people 15 years and older

fish, customary fishing applies to less than one per cent of the State's population. As a comparison, an estimated 37 per cent of the State's population undertake recreational fishing (Department of Fisheries, State of the Fisheries Report, 2000/2001).

Consultation raised a number of points relating to stewardship responsibilities of Aboriginal people. These responsibilities appear to be linked to traditional ownership where there is a responsibility felt by Aboriginal people, particularly traditional owners, to protect fish and use fish only for what is needed. This customary stewardship role is maintained within the Aboriginal community and influences Aboriginal people's fishing behaviour, evidenced by issues consistently raised during consultation, which included:

- A strong objection to wasting fish, including only using fillets and not the whole fish, or taking more than required immediately;
- Expressed concern about impacts on fish by pollution and overfishing;
- Aspirations to be involved in the management of fish resources, and to play a role in assisting in the compliance with fishing rules;
- 'Playing' with fish (sport fishing), viewed as disrespectful to fish; and
- Customary fishing 'seasons' designed to rest fish from fishing pressure.

Separation of customary fishing from other forms of fishing requires legislation that defines the extent, nature, and application of customary fishing rights in order to protect those rights.

The current definition of recreational fishing in the *Fish Resources Management Act 1994* "...fishing for a purpose other than a commercial purpose" will require amendment to include reference to customary fishing, whilst not diminishing any existing rights of Aboriginal people to fish for a recreational purpose.

Recommendation 4: 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 to provide for the latter as a separate class of fishing activity.

2.3.3. Application of Customary Fishing to Individuals

2.3.3.1 Options for Recognition

Legislation that purports to define and protect customary fishing rights must be such that it can be practically administered and enforced. For example, unless Fisheries officers are able to determine to whom customary fishing applies, those rights can be claimed by anyone.

Several options are provided below which outline ways in which customary fishing may be enforced and protected against those who may attempt to falsely claim customary fishing rights for their benefit.

The key difference between each option is the point at which individuals claiming customary fishing should be required to provide proof that they have the right to fish in a customary manner. It is well understood from consultation that Aboriginal people do not wish to have to prove their customary fishing rights. A balance therefore must be found between ensuring those customary fishing rights can be protected and the level of imposition on those bona fide customary fishers.

Although Aboriginal people want to be “left alone” while fishing, Fisheries officers will often approach any person, even when he or she appears to be fishing within their rights. Fisheries officers do not only undertake law enforcement activities, but also approach people fishing to distribute educational material or to collect information for research projects that assist in the understanding of fisheries.

It is believed most customary fishing occurs within current recreational fishing limits and compliance relating to customary fishing is not required in these cases. In addition, experience shows that Fisheries officers quickly obtain a reasonable understanding as to who is a member of the Aboriginal community, particularly in regional areas. With stronger relationship between Department staff and Aboriginal people, this general recognition will increase further still. Therefore, it is anticipated the need for compliance relating to the difficulties of determining to whom customary fishing applies will be limited, but will occasionally be required.

The following options only apply to the extent that fishing is being undertaken in accordance with specified customary fishing rules, which will be discussed in following chapters. Any fishing outside customary fishing parameters should be illegal under fisheries legislation.

Option 1: Positive Recognition

This involves clearly and positively recognising that Aboriginal people have continuing customary fishing rights and responsibilities as the first people of Western Australia. Customary fishing should be recognised and managed as a positive, existing right and not a right to be conditionally granted. Such recognition will require legislative amendments to the *Fish Resources Management Act 1994*.

In practice, under this option legislation would operate in such a way that all persons who are of Aboriginal descent and are fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs would be entitled to fish in a customary manner.

In practice, the only time a Fisheries officer would need to request a person claiming customary fishing rights to provide evidence of his or her their claim is when the person does not appear to be of Aboriginal descent. Mechanisms for addressing onus of proof, and processes for these circumstances are addressed in the next section entitled "Evidence".

The positive recognition model is the preferred option of the Working Group for the following reasons:

- It gives positive recognition to existing rights.
- It meets the objective of ensuring customary fishing is unable to be claimed by non-Aboriginal people.
- It does not require costly, inconvenient or impractical administrative systems.
- It acknowledges that the Aboriginal community continues to be responsible for determining who among the Aboriginal community is able to undertake customary fishing.
- It limits imposition on *bona fide* customary fishing.

Option 2: Customary Fishing Register

Under this option that was suggested during consultation, customary fishing would be administered through a register. This is not a preferred option.

The Aboriginal community would be responsible for nominating all those people who would be entitled to undertake customary fishing in accordance with the definition outlined in this report. This registration would only be required once in a lifetime for each individual and would be free.

This option would allow a registered person, who was fishing in addition to the recreational fishing rules but within customary fishing parameters, to easily prove to Fisheries officers that they are entitled to fish for customary purposes by providing their name and address. If a person is not registered they would be asked to apply to the register within a given time period and would only be prosecuted if they did not, or could not, register within the time given.

The practical use of a customary fishing register is an administrative mechanism that allows for minimum imposition on persons who meet the requirements of the customary fishing definition (and in particular would assist those who may not appear of Aboriginal descent).

The downfalls of this option include:

- The requirement on Aboriginal people to provide initial details for the register that they would see as an imposition on their rights.
- The additional administration and associated costs involved in a registration system.

Option 3: Notification

The West Coast regional review of recreational fishing stated that: *“Customary fishing has been formally recognised in New Zealand, where in certain specified circumstances such as traditional ceremonies, Maori are able to obtain a permit which allows them to exceed recreational bag limits and to collect fish for the whole community. At other times, Maori respect the general recreational bag limits.”*

Under a notification process, Aboriginal people wishing to undertake fishing within customary fishing guidelines would be required to provide notification (at a pre-determined venue) of their intention to fish for customary purposes and obtain a permit to do so. Notification would involve details of time, date and location for the proposed activity. Aboriginal people would be required to prove that they could meet the elements of the customary fishing definition, for example aboriginality and acceptance by the Aboriginal community, at the point of notification.

Based on the views expressed by Aboriginal people during consultation, it is unlikely in practice that Aboriginal people will notify anyone of their intention to fish in a manner customary to them. It is also unclear whether one sector of the Aboriginal community - native title holders - would be required to hold a permit in exercising native title fishing rights.

Aboriginal people are not required to notify anyone of their intention to fish recreationally, or hold a recreational fishing licence. It would appear contradictory to require Aboriginal people to provide notification, or hold a licence, to undertake customary fishing.

This option is not preferred because it:

- Requires significant administration resources.
- Is unlikely to be adhered to, and would be inappropriate for many Aboriginal people, particularly in remote areas.
- Is inconsistent with the existing general exemption of Aboriginal people from the requirement to hold a recreational fishing licence under the *Fish Resources Management Act 1994*, and possibly also under section 211 of the *Native Title Act 1993*.

Recommendation 5: 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.

2.3.3.2. Evidence

For what are anticipated to be limited occasions when a Fisheries officer suspects, on reasonable grounds, that a person who is fishing in accordance with and claiming customary fishing rights is not of Aboriginal descent, the Fisheries officer should not proceed immediately with prosecution, but rather the following steps could apply:

1. The Fisheries officer would require the person to provide his or her name, principle place of residence and date of birth, as currently required under section 189 of the *Fish Resources Management Act 1994*.
2. The Fisheries officer should also be able to require such a person to provide information as to his or her aboriginality and contact details of an Aboriginal community organisation that can vouch for the person's claim. Without this requirement, it would become impractical for a Fisheries officer to protect customary fishing rights from any person who does not appear of Aboriginal descent, claims to be of Aboriginal descent and refuses to provide information to substantiate that claim.
3. If the claimant refuses to provide information as lawfully requested, or false information is given, prosecution should proceed. In this case, the onus of proof should be borne by the claimant. This is consistent with claims to commercial fishing rights, where the onus of proof is with the claimant.

Policy guidelines directing Fisheries officers as to their responsibilities and procedures in these instances should be developed to ensure clarity of procedure and transparency in the broader community as to the role of Fisheries officers in the protection of customary fishing rights.

The onus of proof should involve the claimant providing evidence that customary fishing, as defined in this document, applies to them. The claimant should provide evidence identifying him or herself as being of Aboriginal descent and an Aboriginal person. He or she should also provide verification by an Aboriginal community corporation that he or she are recognised as an Aboriginal person by the community. As an example, each applicant for an Aboriginal and Torres Strait Islander Commission (ATSIC) benefit must complete a statutory declaration declaring that they recognise themselves as an Aboriginal person and obtain verification (from an Aboriginal community corporation by signature under its common seal) that he or she is recognised by his or her community as a person who is of Aboriginal descent.

It is only for people trying to falsely claim customary fishing rights that the onus to establish proof is required and it is anticipated the process will rarely be necessary.

Recommendation 6: 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 to be investigated should be required to prove within the judicial system that customary fishing as defined in this document applies to them.

2.3.4 Developing Parameters for Sustainable Customary Fishing

Rules are required to ensure fish for future generations, and it is widely acknowledged that growing pressures on fish resources mean that protective measures are required. The rules also need to address and allow for the unique customary fishing rights and responsibilities of Aboriginal people.

2.3.4.1 Management Tools

There are a number of tools used to protect and manage the use of fish. Following is a brief description of some of the main management tools that will be considered in the development of customary fishing rules.

- **Bag limits** are set to reflect what is socially acceptable as a “fair day’s catch” for recreational anglers. They have the capacity to reduce the rate at which an aggregation of fish or an area is depleted by fishing, and also help to share the available catch.
- **Size limits** are usually based on the breeding biology of a species and are set to protect fish until they reach maturity and have been able to spawn at least once. Size limits apply equally to all fishers including commercial and recreational fishers. Maximum size limits are useful in protecting large breeding fish.
- **Closed seasons** are used generally for two reasons – to contain total fishing effort or to protect fish at important stages in their life cycle, such as spawning.
- **Closed areas** are also used to protect fish at important stages in their life cycle, to protect sedentary fish species or protect fish habitats from human use.

(Both closed seasons and closed areas may limit all fishing, or limit only some types of fishing. Consequently they can be used as a means of resource sharing and reducing community conflict.)

- **Gear and method restrictions** aim to prevent the use of highly destructive fishing methods such as poisons and explosives, and highly efficient commercial-type fishing gear. It also prevents the take of more fish than was intended.

2.3.4.2 *Considerations When Developing Customary Fishing Parameters*

In developing options for the management of customary fishing, consideration needs to be given to a range of biological, social, legal and political issues, including:

Sustainability and protection of fish - Sustainability and biodiversity principles are the paramount consideration in the development of any fisheries management strategies. The obligation to protect fish for future generations is more important than any individual's right to fish. For example, restrictions on destructive or unsustainable fishing methods such as the use of explosives must apply to the taking of all fish to ensure fish for future generations.

Reflect and acknowledge existing customary fishing practices - Consultation has revealed that the current fishing rules do not always prevent Aboriginal people from fishing according to their customary needs. Any new rules designed to manage customary fishing must be consistent with customary fishing practices to the point that they are sustainable. If any existing customary fishing practices are detrimental to sustainability of fish stocks, these should be addressed appropriately to ensure sustainability in consultation with Aboriginal people.

Compliance accountability - Without the ability to ensure individuals (Aboriginal and non-Aboriginal) are accountable in legislation to a sustainable fisheries management framework, the management and protection of fish resources become ineffective. This results in unsustainable fishing practices and an inability to protect existing fishing rights.

Minimising social conflict - Rules that create perceptions of social inequity have the potential to create division amongst the community and threaten reconciliation efforts. Education will play a key role in avoiding social conflict, however management arrangements can also be applied in ways that minimise the potential for conflict. For example, the equal application of rules in popular fishing areas or spatial separation of activities may minimise conflict.

Community support and expectation - Community expectations change over time. Community expectations about what is an appropriate amount of fish or

fishing practice for particular situations has changed to reflect the growing need to protect fish stocks. Community support is important for the successful implementation of customary fishing options.

Regional differences - Although customary fishing is undertaken for the same reasons throughout the State, Aboriginal people in some areas are more reliant upon, and have greater influence over, the protection and use of fish resources than in other areas. These areas are reflective of the level of dependence upon, circumstance and use of fish resources by Aboriginal people in the area.

Isolated Aboriginal Communities - Aboriginal communities in isolated areas are generally more dependent upon fish resources for food as there are less alternative food sources in many cases. In addition, isolated communities provide less employment opportunities and fish supports low-income groups as a free food source. Fish resources in isolated areas can also provide one of the few opportunities for economic development in Aboriginal communities. There are about 198 Aboriginal communities in the Kimberley region. (Department of Indigenous Affairs, 2003).

Distance from land - The level of use of fish resources by Aboriginal people is seen as a function of distance from shore, broken into three categories. The categories are consistent with the jurisdictional boundaries of fisheries management, the level of use by Aboriginal people in each area, and boundaries commonly expressed in native title claims or framework agreements. They are:

- Intertidal and inland waters – consultation revealed Aboriginal people use these waters most frequently. Intertidal and inland waters include all coastal waters from low water mark to high water mark, estuaries, rivers, creeks and lakes.
- Coastal waters from low water mark to three nautical miles. Three nautical miles is the State jurisdiction to manage fish.
- Offshore waters – these waters are from three nautical miles (State jurisdiction boundary) to the 200 nautical mile exclusive economic zone and represent the waters least used by Aboriginal people. The State manages a majority of fisheries to the 200 nautical mile exclusive economic zone under a joint Commonwealth/State agreement.

Relative population of Aboriginal people - About 11,500 Aboriginal people live in the Kimberley region, almost 40 per cent of the regions population and almost one quarter of the total Aboriginal population in the State. (Department of Indigenous Affairs, 2003)

The level of access as a function of tenure of the land adjacent to the water - Land tenure has implications for fisheries access by land and therefore the management of fish resources. This is particularly important in the case of Aboriginal assigned land, where Aboriginal people have various levels of control over access to the water by land. This is evident in large areas of the Kimberley

region where it is illegal to pass through, or come ashore on, Aboriginal reserve land without a permit.

The level of utilisation of fish resources in the area - In areas where fish stocks are generally fully exploited, the need to manage fisheries to meet sustainability objectives will reduce the flexibility in management to co-operatively meet the aspirations of Aboriginal people. Areas where there are less sustainability concerns and more fish resources to be shared allows for a greater ability to incorporate the aspirations of Aboriginal fishing interests in the management, use and protection of fish.

Based on these factors that affect the circumstances, roles and responsibilities of Aboriginal people in the protection and use of fish resources, it is recommended that management of indigenous fishing issues be on a broad regional approach, in which the State is divided into two areas, being:

Aboriginal Fishing Area 1

- Waters generally adjacent to Aboriginal assigned land (including determined native title claims that contain rights to control access).
- Within proximity to isolated Aboriginal communities; and
- Fish stocks that are not heavily utilised.

Within Aboriginal Fishing Area 1, a greater level of priority is acknowledged in inland and intertidal waters than in waters from low water mark to three nautical miles. Waters immediately adjacent (within a 25km radius) to townsites to be considered as State waters.

Aboriginal Fishing Area 2

- Waters generally adjacent to non-Aboriginal assigned land.
- Within proximity to towns and large population centres.
- All waters from three nautical miles (State jurisdiction) to the 200 nautical mile exclusive economic zone.
- Waters within which fish stocks are generally fully utilised.

These regions (as represented in Map 1, located at the end of this report) must be considered in the application of a management framework to customary fishing to ensure the most appropriate recognition of customary fishing uses and protection of fish.

Recommendation 7: Sustainable customary fishing parameters are required to protect, and promote responsible use of, fish resources. These parameters should be applied on a regional basis, where those regions are 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; and adjacent to isolated Aboriginal communities; and in which relatively low fishing pressure exists; and within State waters jurisdiction [three nautical miles]).
- **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]).

2.3.4.3 *Sustainable customary fishing framework*

Following is a recommended framework for the application of customary fishing parameters and justification for the options. Once established, these customary fishing rules should only be changed following appropriate consultation with Aboriginal interests and should not automatically be subject to changes imposed on other sectors.

Recommendation 8: Customary fishing parameters should be established within the following recommended framework:

<p>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.</p>		
Management measures	Application to Aboriginal people	Justification
<p>Bag and possession limits</p>	<p>Bag limits should not apply, however possession limits should be set to allow enough catch for customary requirements, but prevent overly large or 'commercial' quantities of fish being legally taken, particularly fish at risk of overfishing.</p> <p>Possession limits should be set according to levels of risk of over-exploitation of species. An example is set out in Table 1, which allows each customary fisher to take, for example, seven of the fish in category 1, plus 16 of the fish in category 2, plus 40 of the fish in category 3, plus the possession limit for crabs and shellfish.</p> <p>Recreational bag limits apply to customary fishing outside Aboriginal Fishing Area 1 for species covered specifically by recreational fishing licences (marron, rock lobster, abalone, and trout); or when efficient methods including a set net, a vessel greater than five metres in length or SCUBA is used.</p>	<p>Although it is thought that most customary fishing results in the take of fish well within the existing recreational bag limits, there are occasions when customary fishers must meet customary obligations such as supplying enough fish for community members during times of mourning, or 'sorry time'. In such circumstances recreational bag limits may not be consistent with customary requirements.</p> <p>Given the low number of people engaging in customary fishing in the State, it is not anticipated the abolishment of bag limits is a significant threat to sustainability. However, limits that prevent overly large or commercial quantities of fish from being legally taken should apply according to the risks associated to certain species from overfishing. These limits should allow an appropriate take of fish to meet customary needs, but limit take of fish which are under greater threat from overfishing and permit more of the fish that are less vulnerable to overfishing.</p> <p>Fish have been categorised according to risk of overfishing in the reviews of recreational fishing in the Gascoyne and West Coast, recently approved by the Minister for Fisheries. These categories are reflected in Table 1. Individual species limits should not apply within these categories as they do for recreational fishers. Possession limits should also apply for crustaceans, cephalopods and shellfish not subject to recreational fishing licences.</p> <p>Recreational and commercial fishers must pay for higher management costs of licensed fisheries through commercial and recreational fishing licence fees. Fishing pressure on these species is high, value of these fish are very high, incentive for black market sales of these species and related education and enforcement requirements are high, and more intensive management is required to prevent overfishing.</p> <p>Using a set net, vessel greater than five metres in length or SCUBA greatly increases efficiency and ability to regularly take large quantities of fish, which if permitted in areas where fish stocks are already heavily utilised may contribute significantly to overfishing. These restrictions do not apply in Aboriginal Fishing Area 1.</p>

Special bag or possession limits	Special limits or conservation rules should apply in State waters (e.g. barramundi and Shark Bay snapper) and should be considered for Aboriginal Fishing Area 1 (e.g. barramundi) to protect those species from over-fishing.	Some species such as pink snapper (in Shark Bay) and barramundi are under threat and require more intensive management to ensure sustainability. The application of special bag / possession limits should be less restrictive in Aboriginal Fishing Area 1, where fish stocks are under less fishing pressure. For example, barramundi is generally more abundant and recognised as a culturally important species in Aboriginal Fishing Area 1; therefore a larger special possession limit should apply as compared to State waters (see Table 1).
Size limits	Apply in Aboriginal Fishing Area 2, but do not apply in Aboriginal Fishing Area 1. A strong education program is recommended to raise awareness and promote benefits of size limits for long-term outcomes. Size limits for fish are listed in Table 1.	<p>It is important to protect fish until they are mature enough to reproduce. Size limits are set according to biological attributes of fish and are a very effective fisheries management tool to ensure sustainability. Common fishing practice by Aboriginal people includes returning small fish to the water.</p> <p>In Aboriginal Fishing Area 1, fish are generally under less threat from overfishing. It is not anticipated the application of size limits will have a significant impact on sustainability of fish stocks or on fishing practices in these areas, where small fish will be taken for food if large fish are not available.</p> <p>A strong education program is anticipated to be a more effective long-term strategy in Aboriginal Fishing Area 1. Many species commonly caught by Aboriginal people do not have size limits and will not affect customary fishing in any event.</p>
Seasonal closures	Apply when based on important stages of fish life cycles and for licensed recreational fisheries (rock lobster, marron, abalone and trout).	Seasonal closures are generally based on protecting fish during breeding times and other important stages in their life cycle. Licensed fisheries are highly valued, cost recreational and commercial fishers to participate in the fisheries and are highly exploited, requiring more intensive management. There are currently no relevant seasonal closures in Aboriginal Fishing Area 1.
Closed areas	<p>Apply when based on important stages of fish life cycles and areas of ecological conservation such as sanctuary zones or reef observation areas.</p> <p>Netting closures at the time of publication of this report to apply with consideration given at a later date as to Aboriginal Fishing Area 1.</p>	<p>Closed areas that are based on protecting fish at important stages of life cycles such as nursery areas, breeding or spawning grounds or fish habitat must apply to ensure protection of fish and important fish habitat.</p> <p>Netting closures at the time of publication of this report should apply as they have generally been put in place to protect fish nursery areas or areas subject to overfishing. Proposals to close any new areas to netting should not automatically apply to customary fishing.</p>

<p>Fishing gear and method restrictions</p>	<p>Apply. In Aboriginal Fishing Area 1, traditional fishing methods including spears, fish traps and poisons should be permitted for the purpose of maintaining knowledge.</p> <p>In State waters, these methods, because they can be highly effective, should be given consideration on a case-by-case basis.</p>	<p>Current fishing gear and method restrictions should apply because they generally prevent very efficient or destructive means of fishing such as explosives, set nets and chemical poisons. However, there are several forms of fishing methods traditionally used, including fish traps, spears and plant-derived poisons that should be permitted in Aboriginal Fishing Area 1.</p> <p>In State waters, consideration should be given to the use of such traditional methods on a case-by-case basis, particularly when utilised for educational purposes, or to pass on cultural knowledge. The marking of unattended gear such as rock lobster pots should apply to ensure Fisheries officers do not have to remove unmarked gear from the water unnecessarily.</p>
<p>Protected species</p>	<p>Applies (excluding undersized fish in Aboriginal Fishing Area 1).</p>	<p>Protected species include berried female crabs and rock lobster with eggs, leafy sea dragons and cod over 1.2 metres in length. Vulnerable species are protected for sustainability reasons and therefore must apply.</p>
<p>Other</p>	<p>Consideration given to the application of recreational rules for fishing from some key, popular recreational fishing areas, for example some jetties.</p> <p>Consideration also given to protecting some areas important to customary fishing against non-customary fishing activity.</p>	<p>This is to prevent possible conflict in places that are popular for recreational fishing.</p> <p>Discussed in later chapters.</p>

Table 1 Categories of Fish, Size Limits and Proposed Possession Limits for Customary Fishing

Category 1 Fish - Combined possession limit of seven	Minimum Size
Blue groper	
Barracuda	
Baldchin groper / tuskfish / bluebone	400mm
Bone fish	
Cobbler	430mm
Cobia	
Cods	
Coral trout / coronation trout	450mm
Dhufish	500mm
Giant herring	
Golden / Giant Trevally	
Job fish	
Mackerel – Spanish, shark and Wahoo	900mm
Mangrove jack	
Mahi mahi	
Milk fish	
Mulloway	450mm
Nannygai / red snapper	230mm
Parrotfish	
Pearl Perch	
Pink snapper	410mm
Queen snapper	410mm
Red emperor	410mm
Salmon, Australian	300mm
Samson fish/Amberjack	
Sea Perch	
Shark	
Spangled emperor/blue lined emperor (black snapper)	280mm
Tuna	
Yellowtail kingfish	

Category 2 Fish - Combined possession limit of 16	Minimum Size
Bream - north-west black & yellow fin	250mm
Bonito	
Fingermark bream	
Flathead	250mm
Flounder	250mm
Goatfish	
Leatherjacket	250mm
Mackerel – school	500mm
Northwest snapper	280mm
Skippy / trevally	200mm
Snook/ pike	330mm
Tailor	250mm
Threadfin salmon	
Whiting - King George and Yellowfin	250mm

Category 3 Fish - Combined possession limit of 40	
Blue mackerel	
Dart	
Garfish	
Gurnard	
Herring	

Longtoms	
Mullet	
Tarwhine (silver bream)	
Whiting – sand, school	
All other species not listed	

Special Possession Limits	Area	Possession limit
Barramundi	Aboriginal Fishing Area 2	2 (550mm)
	Aboriginal Fishing Area 1	4
Pink Snapper	(Inner gulfs of Shark Bay only)	Recreational fishing rules apply

Crustaceans, Shellfish and Cephalopods	Possession limit	Size limit
Blue swimmer crabs	40	127mm
Mud Crabs	10	135mm
Prawns	18 litres	
Cockles and Pipis	4 litres	
Razorfish	40	
Scallops	40	
Sea Urchins	40	
Mussels	18 litres	
Squid, cuttlefish and octopus combined	30	

Licensed Recreational Fisheries	Recreational fishing rules apply.
Rock lobster, marron, abalone, trout	

2.3.5 Customary Take Of Pearl Oyster

The majority of pearl oysters are managed under the *Fish Resources Management Act 1994*, which allows for the customary take of pearl oysters covered under that Act (subject to bag and other conservation limits). However, the pearl oyster *Pinctada maxima* is managed under the *Pearling Act 1990*.

Management of this species is by quota allocations, with all quotas currently allocated to the commercial fishery. There is currently no provision in pearling legislation for the take of pearl shell by customary fishing. During consultation it was identified that pearl shell, including *Pinctada maxima*, is an important part of Aboriginal culture in the Kimberley region of the State. It is recommended that pearling legislation pertaining to *Pinctada maxima* include capacity for the Minister for Fisheries to allow for the customary use of that species of pearl oyster.

Recommendation 9: 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.

2.3.6 Promoting Awareness amongst the Broader Community

Aboriginal groups have raised concern about the possible impact of separate rules for customary fishing and how they may impact on relations between Aboriginal and non-Aboriginal people. A community awareness program must accompany any changes to fisheries legislation and management relating to customary fishing to raise awareness within the broader community about Aboriginal customary fishing.

Most people are unaware of the existing rights and interests of Aboriginal people, values placed on fish and fishing by Aboriginal people and the reasons for ensuring Aboriginal people can continue to exercise their customary fishing practices. A clear and prolonged education process needs to be developed to ensure the general community is able to access relevant information that will assist it in making decisions about the incorporation of customary fishing into fisheries management programs, and be mindful of the potential issues that may arise from a lack of understanding of customary fishing rights and interests.

Recommendation 10: 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.

2.3.7 Access

Access to fishing areas historically used by Aboriginal people, have been eroded as a result of the granting of various land tenures, including lands vested in State agencies. An example includes access to the coast by Aboriginal people wishing to fish in a customary manner being restricted as a result of pastoral stations in the Pilbara. In addition, access is being reduced with the increasing imposition of fees to pass through, or camp on areas of land adjacent to waters where customary fishing has taken place.

Although it is not within the scope of Fisheries legislation to address such access issues, it is an issue of importance raised by Aboriginal people as it affects their ability to continue to fish for customary purposes.

Recommendation 11: The importance of access to fishing areas by Aboriginal people be recognised by the State Government and it endeavours 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.

SECTION 3 INVOLVEMENT IN FISHERIES MANAGEMENT

3.3. Options

3.3.1 Engaging with Aboriginal Fishing Interests

Aboriginal interests are being more frequently identified as requiring specific consultation or engagement for issues relating to the protection, management and use of fish resources. However, Aboriginal people are still generally considered part

of the recreational fishing sector, and there are few established processes for engaging specifically with Aboriginal people on fisheries issues.

Appropriate recognition of Aboriginal interests as key stakeholders in fisheries is of particular importance, given the current development of an allocation framework as part of the Integrated Fisheries Management Strategy². This allocation framework will be used to determine how fish resources should be shared among the various groups that use fish resources. Whatever form the allocation process takes, consideration needs to be given to how Aboriginal fishing interests, including traditional owners and native title claimants or holders, are considered and engaged when allocation decisions are made.

It is recommended that Aboriginal people be recognised as a separate key group, and as such afforded the same level of engagement in consultative and management processes as the other two key user groups; the recreational fishing sector and the commercial fishing sector. The rationale for this recognition is:

- Fishing by Aboriginal people has always been recognised as a separate form of fishing in Western Australian fisheries legislation.
- The *Native Title Act 1993*, which overrides any inconsistent State fisheries legislation, acknowledges the right of Aboriginal people to fish in accordance with native title.
- There are notification requirements relating to some fisheries management actions that have been established as a result of the *Native Title Act 1993*. Notification responsibilities have already been established in Ministerial Policy Guideline Number 8, '*Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia*' (Department of Fisheries, 1998) that relate to application processes for pearling and aquaculture development in coastal waters.
- The Government of Western Australia has, in its *Statement of Commitment to Aboriginal People (2002)*, recognised that Aboriginal people have continuing rights and responsibilities as the first people of Western Australia, including traditional ownership. This should include the non-exclusive rights and responsibilities of Aboriginal people to manage and use fish resources in accordance with traditional ownership roles, and be recognised in conjunction with other user groups within today's contemporary fisheries management structure.
- Fisheries are managed successfully when they are managed in partnership with stakeholders. The current level of engagement with Aboriginal people in the development of fisheries policy and legislation is insufficient to provide an environment for successful partnerships with Aboriginal people.
- Continued efforts working toward reconciliation requires recognition of Aboriginal people in the management of fish resources.

² Integrated Fisheries Management is described further in Appendix 2.

Recommendation 12: Aboriginal people be recognised as a separate, key fishing sector group and as such afforded the same level of engagement in fisheries consultative and management processes as the recreational fishing sector and the commercial fishing sector.

3.3.2 Enhancing Consultation

In order to recognise Aboriginal interests as a separate key fishing stakeholder group and engage Aboriginal people at the same level as the recreational fishing sector and the commercial fishing sector, consultative mechanisms appropriate to address the unique cultural issues surrounding consultation with Aboriginal interests should also be established.

The importance of consultation has been highlighted by the State Government in a resource guide entitled *Consulting Citizens* (Government of Western Australia, 2002) as a first step in establishing 'best practice' guidelines for Government agencies undertaking consultation.

Consultation is a crucial part of managing fisheries in Western Australia. It can be an extremely effective tool for Aboriginal people to be involved with, and have some influence in, the management of fisheries in this State. The consultation process is how other stakeholder groups such as commercial fishers, recreational fishers and conservation groups participate in the management of fish resources.

However, the existing fisheries consultative mechanisms are not conducive or necessarily appropriate for involvement by Aboriginal people. Existing mechanisms such as Fishery Management Advisory Committees and public discussion documents do not address issues associated with Aboriginal culture and society. For example, Aboriginal people are not a homogenous group, of which one member can represent the views of all. Because of customary tenure and traditional ownership, one Aboriginal representative cannot speak on behalf of another's area, or 'country'. In addition, there are numerous Aboriginal communities, organisations and individuals that differ regionally, structurally and socially.

Consultation with Aboriginal interests should address extended time frames in consideration of, for example, the remoteness of some Aboriginal groups, seasonal conditions that may affect access to Aboriginal communities in the north of the State, cultural ceremonies and 'sorry time'³.

Another consideration is that the 'Aboriginal fishing sector' is not experienced in dealing with Government fisheries management processes, terminology and concepts because of a lack of engagement with Aboriginal groups in the past. These are taken for granted when consulting with commercial and recreational sectoral interests with the benefit of decades of experience. For this reason, training and assistance in consultation processes may be required.

A number of options for enhancing consultation with Aboriginal interests as a key stakeholder group are identified below:

³ Sorry time refers to the period of time, which may be months, during which the passing of a family or community member is mourned.

3.3.2.1 *Option 1: Existing Aboriginal Consultation Networks*

There are several existing consultation networks within Aboriginal organisations and communities throughout Western Australia including the Commission of Elders, Aboriginal and Torres Strait Islander Commission (ATSIC), Regional Councils that consist of elected Aboriginal representatives, native title working groups (or prescribed body corporate) and native title representative bodies, Community Development and Employment Project (CDEP) organisations, Aboriginal Resource Centres, Aboriginal community administration offices, and the Department of Indigenous Affairs. Aboriginal radio and other media are also very effective tools to disseminate information, particularly in remote areas.

Each of these organisations or networks presently provide opportunities to engage Aboriginal people in the management of fish resources and assist in disseminating and receiving information. It is a matter of choosing the most appropriate network for the audience and type of consultation required. This process allows for information to flow to a wide range of Aboriginal interests from remote outstations to Aboriginal organisational structures. Because these existing networks and consultative processes have been developed by Aboriginal people and are run by Aboriginal people they already address a number of the issues and challenges relating to Aboriginal consultation.

A disadvantage to the use of such networks is that fisheries issues will be competing with many other issues including health, housing, education and funding. For this reason it is important for the Department of Fisheries to have in depth knowledge about the most appropriate ways to appropriately and effectively utilise the networks.

This process would be relatively efficient and cost effective compared to establishing new consultative structures. It would primarily require someone with an understanding of the issues and networks to coordinate information flow through the various networks. This has been the most commonly suggested process for consultation and was utilised during the consultation process for the Aboriginal Fishing Strategy. There is a risk that without a suitably experienced person to coordinate consultation, the effectiveness of this consultative mechanism would be diminished.

3.3.2.2 *Option 2: Indigenous Fisheries Management Advisory Committee*

Another option to give Aboriginal interests the same level of recognition as other key stakeholder groups is to establish an Indigenous Fisheries Management Advisory Committee to address State-wide issues and provide advice to the Minister for Fisheries. Membership could consist of representatives of the following;

- Traditional owners
- Aboriginal representatives with experience in the fishing industry
- Regional Council representatives
- ATSIC
- Department of Indigenous Affairs
- Western Australian Aboriginal Native Title Working Group (WAANTWG)
- Western Australian Fishing Industry Council
- Recfishwest
- Conservation Council of WA

- Department of Fisheries

A major barrier to this option is financial, as costs of establishing a State-wide consultative mechanism are significant.

The establishment of an Indigenous Fisheries Management Advisory Committee will provide Aboriginal organisations and individuals with opportunity for direct input into State-wide and strategic policy issues. However, it will not necessarily be effective at consulting with the diversity of Aboriginal interests outside of key Aboriginal organisations. It would not be able to provide a view considered by Aboriginal people to be representative of Aboriginal people because individual members are unable to speak for areas outside of their own. Although a good mechanism to obtain the views from Aboriginal organisations on State-wide issues, it will not be effective at ensuring consultation with Aboriginal people on-the-ground.

3.3.2.3 *Option 3: Aboriginal Fishing Forum*

A third option raised by Aboriginal interests during consultation was a fishing forum for Aboriginal interests to meet on an annual basis to discuss and develop recommendations to address fishing issues. This form of consultation would require a co-ordinating body to facilitate the event and it is likely that resources would be required for travel and accommodation for attendees. The forum could be a single, State-wide event or a series of forums throughout the State.

3.3.2.4 *Option 4: Representation on existing Management Advisory Committees and in other fisheries management processes*

In the case of any of these options, membership on other relevant existing Management Advisory Committees should include Aboriginal people as representatives of a key stakeholder group to ensure adequate representation on those committees. Although individual Aboriginal members may only be able to speak for their own area on specific or localised issues, much of the work of Management Advisory Committees is of a broader planning and policy nature, on which Aboriginal representatives can have input and ensure that generic issues important to Aboriginal people are heard. Aboriginal representation is also beneficial for developing relationships and awareness between Aboriginal people and other key fisheries stakeholders. This has been successful in the Recreational Fishing Advisory Committee.

An induction package and training to introduce and assist Aboriginal MAC members in their role as advisory committee members would be required to familiarise new members with Government fisheries management processes, terminology and concepts.

An alternative, and preferred approach, is to fund a person who is able to represent the views of Aboriginal fishing interests on Fisheries Management Advisory Committees and in other fisheries management processes and forums. The benefits of this option is that the funded position would become familiar with, and develop expertise in, fisheries management concepts and issues and would be able to provide a dedicated and professional representation of indigenous views on State-wide and regional fisheries policy and management issues.

As an example, this option has been successfully utilised in the conservation sector, where a position with the Conservation Council of WA is funded through the Department of Fisheries to independently represent the interests of conservation in the development of fisheries management and policy.

Recommendation 13: Consultation between the Department of Fisheries and Aboriginal interests is undertaken by utilising existing Aboriginal community and organisation networks. In addition, a dedicated position external to the Department of Fisheries is funded to represent indigenous interests on Fisheries MACs and in other fisheries management processes.

3.3.3 Engaging Aboriginal Interests in Aboriginal Fishing Area 1

As identified in earlier sections of this report, Aboriginal people in Aboriginal Fishing Area 1 (see Map 1) are more reliant upon, and have greater roles and responsibilities in the protection and use of fish resources than in other areas. Aboriginal Fishing Area 1 is reflective of:

- The level of dependence upon, circumstance and use of fish resources by Aboriginal people in the area;
- The level of access as a function of tenure of the land adjacent to the water; and
- The level of utilisation of fish resources in the area.

It is proposed that, in addition to engaging Aboriginal people on an equivalent basis to other key stakeholder groups, Aboriginal interests in Aboriginal Fishing Area 1 are given opportunity to participate more extensively in fisheries planning and management processes (as indicated in the management framework set out hereunder). Options for engaging Aboriginal interests in Aboriginal Fishing Area 1 are outlined below.

3.3.3.1 Co-operative Decision Making - Inland and Intertidal waters

There are many variations in what constitutes joint-management. Three joint or co-management models outlined in the Environment and Natural Resources Committee (Victoria) Inquiry into Fisheries Management, include:

1. A consultative model where government takes the decisions, but consults with stakeholders;
2. A co-operative model where government and stakeholders co-operate in decision making; and
3. Delegated models in which management authority for some functions is delegated to stakeholders or committees and government is informed of the decision taken. (Environment and Natural Resources Committee, 2001).

The Department of Fisheries in Western Australia currently operates under a consultative model (a). It is recommended that for inland and intertidal waters (low water mark to three nautical miles or State waters) in Aboriginal Fishing Area 1, Aboriginal interests and the Department of Fisheries engage within a two-party cooperative model (b).

In other words, decisions about the protection and use of fish resources by all user groups in inland and intertidal waters adjacent to Aboriginal Fishing Area 1 that may significantly impact on Aboriginal interests should be made through a cooperative decision-making process involving the Department of Fisheries and Aboriginal interests. It must be noted that whatever form a cooperative decision making model takes, the Minister for Fisheries (or the Executive Director of Fisheries as delegated) would retain the final decision making role as required under statute (Part 2, *Fish Resources Management Act 1994*).

The cooperative decision making process would not address the allocation of fish resources, to be considered and addressed through an independent process, which is the subject of the Integrated Fisheries Management Review Committee report provided to the Minister for Fisheries in November 2002.

The cooperative decision making model is recommended for inland and intertidal waters (low water mark to high water mark). Aboriginal people more commonly access these waters than offshore waters. As such, it is more likely that native title would be recognised in inland and intertidal waters than offshore waters, which may have implications to consultation or notification requirements.

It has been reported that the benefits of a joint-management approach include possible improvements in data collection, harvesting decisions, allocation decisions, protection of habitat, compliance, planning and broad policy making (Environment and Natural Resources Committee, 2001). In addition, a joint management approach within an appropriately structured cooperative decision making framework allows for relationships to be built between fisheries management and traditional owners, who can offer additional perspectives and knowledge about fish resources to decision making processes.

This report will not detail the mechanisms required to establish a cooperative model, and possible terms of reference and procedures for formalising cooperative decision making processes. These mechanisms, which would include determining what constitutes a 'significant impact on Aboriginal interests' requires significant work and thought additional to this report, with appropriate input from fishing stakeholders.

3.3.3.2 *Additional specific consultation – low water to three nautical miles*

Additional to recognising Aboriginal people as key stakeholders, Aboriginal interests that may be significantly affected by fishing activities and fisheries decisions in waters adjacent to Aboriginal Fishing Area 1 from low water mark to three nautical miles, should be engaged by the Department of Fisheries through additional consultation at specific points in fisheries management processes. The intent of this process is to ensure Aboriginal interests are given proper consideration when they are likely to be, or are, significantly affected by fisheries management decisions.

This intention is reflected in Part 14, Division 2 of the *Fish Resources Management Act 1994*, which relates to objections to aquaculture leases and exclusive licences based on rights of traditional usage. Although now legislatively redundant as a result of the *Native Title Act 1993* and the High Court decision (*State of Western Australia v The Commonwealth*, 16 March 1995) rescinding the *Land (Titles and Traditional Usage Act 1993)*, the original spirit of this Division of the *Fish Resources*

Management Act 1994 was to ensure rights of traditional usage are given proper consideration.

This consultation process should be defined by the Minister for Fisheries in Ministerial Policy Guidelines that guide the Executive Director of Fisheries and include a statement of the principles and other matters to be considered in making determinations. Ministerial Policy Guidelines should include guidance as to how Aboriginal interests are to be consulted, and as to how issues, which the Minister considers to be of importance to Aboriginal people, are given proper consideration. For example, in the case of determining or amending management plans (s. 64 and 65 of the *Fish Resources Management Act 1994*).

Table 2 reflects the recommended levels of engagement that should be afforded Aboriginal interests when addressing fish resource management issues in Aboriginal Fishing Area 2 and Aboriginal Fishing Area 1.

Table 2 Framework for engaging Aboriginal interests in fisheries management

<p>Minister or delegate retains decision making authority as required by statute Sustainability principles apply. <i>Native Title Act 1993</i> notification requirements apply.</p>	
<p>Inland and intertidal waters in Aboriginal Fishing Area 1</p>	<p>Joint management or cooperative decision making with Aboriginal interests when a decision may have a significant impact on Aboriginal interests. Possible examples include review of management plans, legislation or implementation of a fish habitat protection area.</p>
<p>Waters from low water mark to three nautical miles or State waters in Aboriginal Fishing Area 1</p>	<p>Specific consultation with Aboriginal interests when a decision may have a significant impact on Aboriginal interests. Possible examples include review of management plans, legislation or implementation of a fish habitat protection area.</p>
<p>Waters within Aboriginal Fishing Areas 1 and 2 (all State waters)</p>	<p>Aboriginal people recognised as a unique fish user group and engaged in management decisions at an equivalent level as commercial and recreational fishing sectors.</p>

Recommendation 14: 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.

3.3.4. Allocations For Customary Fishing

3.3.4.1 Allocation Priority

Decisions are made regularly by the Department of Fisheries to address how fish resources are shared among competing user groups and protected against overfishing. Recently, the Integrated Fisheries Management Review Committee reported to the Minister for Agriculture, Forestry and Fisheries on the development of an integrated fisheries management system in Western Australia (Integrated Fisheries Management Review Committee, 2002).

This approach requires decisions to be made about setting broad allocations between groups within the sustainable catch limits determined for each fishery, and strategies to overcome temporal and spatial competition at a local or regional level. All of these decisions can have an impact on customary fishing. The question is at what point and level should customary fishing be affected by changes to allocations and/or fisheries management arrangements?

The Commonwealth Law Reform Commission's report number 31, *The Recognition of Aboriginal Customary Laws* recommended:

"As a matter of general principle, Aboriginal traditional fishing should take priority over non-traditional activities, including commercial and recreational activities, where the traditional activities are carried on for subsistence purposes. Once this principle is established the precise allocation is a matter for the appropriate licensing and management authorities acting in consultation with Aboriginal and other user groups."

The Law Reform Commission also recommended that conservation principles represent a legitimate limitation on the rights of indigenous people to fish.

As an example, the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII defines subsistence uses, accords a preference or priority to the taking of fish and wildlife for subsistence over taking for other uses, and establishes criteria for restrictions on take for subsistence when necessary to protect the resource (Buklis L.S., 2002).

The term 'subsistence' in both the Commonwealth Law Reform Commission's report number 31 and the Alaska National Interest Lands Conservation Act (ANILCA) are both intended in the broader context to include the customary and traditional uses, which include ceremonial exchange, barter, satisfaction of kin obligations and use for direct personal or family consumption as food.

Allocation processes in fisheries where customary fishing (as defined in this document) is practised should recognise customary fishing as having priority over other fishing sectors, including commercial and recreational fishing. The rationale for this includes:

- Customary fishing activity by Aboriginal people is a right expressed in Commonwealth legislation (*Native Title Act 1993*).
- The right of indigenous people to fish in a customary manner is covered by the *International Convention on Civil and Political Rights* and the *International Convention on Biological Diversity*." (Offshore water rights discussion booklet, 2002).

- Recognition of the continuing importance of fish and fishing to Aboriginal people as a direct source of food, an integral part of many Aboriginal people's culture, a part of the educational process and passing on of information, and spiritual connection to the land and sea.
- The Western Australian Government recognises Aboriginal people as having continuing rights and responsibilities as the first peoples of the State. This includes the continuing practice of customary fishing.

Recommendation 15: In relation to allocation processes, customary fishing should be given priority over other fishing sectors including commercial and recreational fishing.

3.3.4.2 *Fixed Allocations*

The level of customary take in a particular fishery should be assessed by the Department of Fisheries and a fixed allocation prescribed that meets all of the customary requirements from that fishery. A fixed allocation is required for two purposes, the first being fisheries assessment and reporting requirements, and secondly, to ensure any allocations made to other sectors do not impact on the ability of Aboriginal people to meet their customary requirements from that fishery.

However, there may come a time where the fixed allocation attributed to customary fishing is a proportionally large enough component of the sustainable catch level in a fishery that it affects the ability of management to restrict the total take in a fishery in response to sustainability needs. This might come about by reductions in other sectors or variations in fish stocks.

If this becomes the case, the fixed customary fishing allocation should be reduced for sustainability reasons. That is, customary catch allocations should be fixed until they constitute a substantial component of the allowable catch in a fishery, at which point the fixed allocation must be reduced.

As a hypothetical example, it may be determined that commercial and recreational fishers are each able to take 45 tonnes of bluefish a year and customary fishing of bluefish is given a fixed allocation of 10 tonnes a year. Stocks of bluefish begin to decline so allocations to the commercial and recreational sectors are each cut to 30 tonnes a year. The customary fishing fixed allocation would remain at 10 tonnes a year.

If stocks of bluefish continue to decline, commercial and recreational allocations would be reduced further and a point would be reached where the customary take in the fishery is a substantial proportion of the total available catch and it would become necessary to also reduce the fixed customary allocation to ensure sustainability is not compromised. 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.

Given an estimated one per cent of the population participates in customary fishing in Western Australia, and in most cases customary fishing take is anticipated to be

relatively low compared to commercial and recreational take, it is not expected that reductions in allocations will be required in most customary fisheries in the foreseeable future. In the longer term, the application of management and allocation adjustments will ensure on-going sustainability of resources, and include customary fishers appropriately in on-going management of important resources.

Recognition of customary fishing as a priority in fisheries allocation does not quarantine it from all management adjustments. If there is clear evidence that there is a need to protect fish for biological reasons (for example at important stages of its life cycle such as spawning events) measures to protect fish for this purpose must apply across all user groups for the benefit of the fishery. In such a case there is no priority to any fishing sector.

Recommendation 16: 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.

3.3.5 Information requirements to support allocation and management decisions

The Commonwealth of Australia has developed *Guidelines for the Ecologically Sustainable Management of Fisheries* (Environment Australia, 2001) and incorporated ecological sustainability requirements into Commonwealth environmental and fisheries legislation. These guidelines and legislation require the Department of Fisheries in Western Australia to ensure that fisheries that include export of marine species undergo assessment to determine the extent to which management arrangements will ensure the fishery is managed in an ecologically sustainable way.

One of the objectives that need to be met for assessment purposes includes: *that there are reliable estimates of all removals, including commercial (landings and discards), recreational and indigenous, from the fished stock.*

Further to the Commonwealth reporting requirements, reasonable information on which to base decisions, is fundamental to sound resource management. The Integrated Fisheries Management Review Committee has recommended in its report to the Minister for Fisheries (2002) *“the development and funding of a comprehensive research and monitoring program encompassing all user groups is essential to provide the necessary information for sustainability and allocation issues to be addressed under an integrated framework.”* There is a distinct lack of information currently available about the relative impact on fish resources as a result of customary fishing.

A survey of customary fishing that builds on the outcomes of the National Indigenous Fishing Survey (yet to be published) is recommended to provide the information required for sound management of fish resources. The following criteria must be met when developing and undertaking such research:

- Care must be taken to ensure information is collected in culturally sensitive and appropriate ways;
- The research methods, rationale and what the information will be used for must be transparent to the Aboriginal community; and
- Ownership of the information needs to be clearly established and understood before beginning the program.

One example of a program that may meet these requirements includes an Indigenous Subsistence Fishing Survey Kit, developed by indigenous interests (Balkanu, Queensland), and written for indigenous communities. It is designed to allow Aboriginal communities to collect and organise their fishing information over a period of time in a culturally appropriate manner. Under this arrangement, information collected by the community is owned by the community. As part of the community's contribution to sustainable management of fish resources data should be made available in a useful form by the community to the Department of Fisheries.

A benefit to Aboriginal communities from collecting this data is information that Aboriginal people can use when debating issues in fisheries management forums. In addition it could provide Aboriginal people with information to complement their own knowledge about the fish stocks and fishing pressure in an area. The benefit to the Department of Fisheries is the ability to manage fish better, meeting its obligations under the *Fish Resources Management Act 1994*, and ability to better meet Commonwealth reporting requirements.

A potential funding source for the development and collection of information is the Fisheries Research and Development Corporation (FRDC), but there remains a requirement for some level of commitment of resources from the Department of Fisheries.

Recommendation 17: 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.

3.3.6 Protecting Cultural Heritage

Consultation identified a need to give consideration to the protection of cultural heritage sites from the impacts of fishing activity, and the protection of important customary fishing areas from other fishing activity and activities associated directly with fishing. These needs are discussed in the following chapters.

3.3.6.1 Customary fishing areas

The protection of specific areas adjacent to Aboriginal land for customary fishing has been recommended by the Commonwealth Law Reform Commission (in its report on

The Recognition of Aboriginal Customary Laws, 1986) and is consistent with aspirations raised through consultation undertaken as part of this strategy.

The establishment of more effective consultation and co-management frameworks, and recognition of Aboriginal Fishing Area 1 (Map 1), will ensure Aboriginal interests are given consideration in resource sharing and allocation debates and greatly enhance the ability of Aboriginal interests to protect cultural heritage and customary fishing practices. This protection can be achieved through existing resource sharing and legislative processes, consistent with the creation of special commercial fishing zones, commercial closures in key or priority recreational fishing areas, or fish habitat protection areas.

As an example, the Department of Fisheries has already recognised key Aboriginal communities as requiring protection from commercial mud crab fishing to ensure there are sufficient mud crab in areas adjacent to communities for customary needs. Other requirements for protection identified in consultation include the protection of specific customary fishing areas, such as lore grounds. To ensure a coordinated approach to the assessment and implementation of these resource sharing initiatives, this report recommends the development of policy guidelines to address criteria for the assessment and implementation of customary fishing areas.

Consistent with the recommendation of the Commonwealth Law Reform Commission's recommendations in its report *The Recognition of Aboriginal Customary Laws* (1986), this report considers that customary fishing areas should be limited to Priority Areas (for Priority Areas see Map 1).

Recommendation 18: 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.

3.3.6.2 *Protecting cultural heritage sites, areas and values*

It is important for the Department of Fisheries to note the need to ensure consistency with statutory Aboriginal heritage protection requirements (as described in the *Aboriginal Heritage Act 1972*) in development of fisheries management and policy, particularly where Aboriginal heritage is linked directly to physical and biological attributes of the marine environment. Consultation with indigenous organisations in these instances, in particular the Department of Indigenous Affairs, is encouraged to ensure fisheries management, policy and legislative development is consistent with statutory Aboriginal heritage requirements.

Consultation with traditional owners in the Kimberley region of the State has revealed a major concern among Aboriginal people relating to tourists visiting culturally-sensitive areas on aquatic tour ventures. These have recently become subject to fisheries legislation and policy in Western Australia.

Some of the areas visited by charter boats are contained within Aboriginal reserve land for which legal access is only possible by obtaining permits pursuant to the *Aboriginal Affairs Planning Authority Act 1972*, and some of the sights that tourists may wish to see are protected under the *Aboriginal Heritage Act 1972*. It is acknowledged that there is limited understanding by the public and fishing sector of

the legal requirement to hold a permit to gain land access to many areas along the Kimberley coast and Aboriginal heritage protection requirements. Therefore, it is likely that promotion of Aboriginal heritage protection will alleviate many of these issues.

If there is an identified need to provide protection for particular Aboriginal sites or areas from impacts of fishing activities, an option to be considered is the use of existing fisheries legislative and licensing mechanisms to limit or restrict access to particular areas by fishing sector interests. Another is to appropriately amend the *Aboriginal Heritage Act 1972*.

Recommendation 19: 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.

3.3.7 Marine Resource Use Planning

Aboriginal interests are an important part of planning marine resource uses and have expressed their aspirations to be recognised and included in these planning processes. Aboriginal people have also voiced concern about their own ability to effectively provide input into fisheries consultative and planning processes without a strategic overview of their own needs, primarily from a lack of resources to do so.

Aboriginal interests, particularly traditional owners, have expressed a desire to undertake a proactive marine planning process to identify their needs and aspirations for particular areas, with the assistance of a consultant. These plans would then be used as a submission to government marine planning processes. They would also be available to fishing sector interests who could then identify issues prior to making applications for licences.

It is anticipated the marine plans would include culturally sensitive areas, areas identified for future economic development use, e.g. aquaculture by traditional owners, customary fishing needs, locations of communities or planned outstations, etc.

The benefits of such a process would include:

- Proactive and coordinated input from Aboriginal interests resulting in better opportunities for issues to be considered.
- Provision of solid planning information into broader government planning processes to ensure Aboriginal interests are considered appropriately.
- Better understanding and recognition of Aboriginal issues and aspirations in fisheries planning and management processes.
- Better understanding by proponents of issues prior to applications/proposals leading to more efficient consultation processes.
- Better information and transparency for decision makers.

In the longer term, it is anticipated these planning processes would assist in reducing overall consultation costs. Where possible, a marine planning process should be linked with the Department of Fisheries existing regional fisheries planning program. Because of the benefits of such a program to whole of Government planning and other Aboriginal interest groups, both Government and external funding options should be sought by the Department of Fisheries in partnership with Aboriginal interests for such an initiative.

It is important to note that the plans will not be successful unless Aboriginal people retain ownership of the process, which is essential for credibility.

Recommendation 20: 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.

3.3.8 Capacity Building and Employment

This section refers to an identified need to ensure there is not only improved consultation to ensure involvement of Aboriginal people in the way fish are protected and shared, but also to have Aboriginal people employed and participating in contemporary fisheries management. Employment may be either within the Department of Fisheries or other organisations that engage in marine management such as ATSIC or land and sea councils.

In the same way that the management of fish resources benefits from having experienced and professional individuals in the conservation, commercial and recreational fishing sectors, it is beneficial to have individuals experienced in fisheries management in Aboriginal organisations with which the Government engages. These individuals all play a vital role in developing creative solutions to fisheries resource management challenges and developing a greater understanding between management, stakeholders and indigenous groups.

3.3.8.1 Aboriginal Recruitment and Employment Policy

Part of the longer term strategy to improve Aboriginal involvement in fisheries management is to ensure Aboriginal people are employed within the Department of Fisheries in the fisheries compliance and management fields. To ensure this occurs, an Aboriginal employment policy for the Department of Fisheries is recommended.

The *Royal Commission into Aboriginal Deaths in Custody* (Johnston, E. et al 1991) recommended that “governments should be prepared to set targets for recruitment into the public sector at somewhat higher target figures than would reflect the proportionate representation of Aboriginal people in the population.” The Department of Fisheries should enhance its current employment policy to reflect, at a minimum, regional and State-wide Aboriginal population ratios.

On the State-wide level, 3.2 per cent of the population is identified as being Aboriginal (ABS, Census 2001). The Department of Fisheries should as a matter of

policy set an increased employment target to obtain a minimum 3.2 per cent employment rate of Aboriginal people across the whole Department.

More particularly, employment targets should reflect the proportional population make-up in regional areas where possible. For example, the Department of Fisheries should aim to employ a greater proportion of Aboriginal people in northern regions of the State (particularly the Kimberley in which 33.3 per cent of the population is indigenous [ABS, 2001 Census]).

Consideration must also be given to the types of positions held by indigenous people employed within the Department. The Department must encourage and provide adequate training to Aboriginal people who wish to aspire to more senior levels within the organisation. For example, the Developing Future Natural Resource Managers and Leaders Traineeship discussed in the next chapter is targeting training for indigenous Western Australians to begin employment with the Department at management level.

The Department currently employs five people who identify themselves as Aboriginal, representing approximately 1.5 per cent of the Department's staff. In order to meet a 3.2 per cent employment target, the Department needs to employ an addition six or seven indigenous people as full-time employees. It is proposed that the target minimum employment of 3.2 per cent be met within four years, consistent with the time it takes for two cycles of the Future Natural Resource Managers and Leaders program outlined in the next chapter.

Outcomes should be consistent with the Government's Equity and Diversity Plan for the Public Sector Workforce 2001/05.

To assist in the recruitment and retention of Aboriginal staff, the employment policy should also include an Indigenous Recruitment and Career Development Strategy, similar to strategies developed by the Department of Employment, Workplace Relations (DEWR, 2002). Examples of initiatives may include developing a recruitment assistance package for prospective indigenous Australian job applicants, consideration of transfer policies of Aboriginal staff in light of cultural and family ties to particular regions, and involving existing indigenous staff in corporate recruitment activities such as assisting in attracting indigenous applicants.

It is anticipated that such recruitment and career development strategies will assist the Department of Fisheries to reach and maintain Aboriginal employment targets.

Recommendation 21: The Department of Fisheries develop an Aboriginal employment policy that includes:

- a. 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;
- b. 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
- c. An Indigenous Australian Recruitment and Career Development Strategy.

3.3.8.2 *Employment and Training Programs*

There are a number of employment programs that can be used to achieve greater representation of Aboriginal interests in fisheries management related positions in Government and Aboriginal organisations. These options include the Developing Future Natural Resource Managers and Leaders program.

The Working Group recommended early in its term the creation of an Aboriginal trainee fisheries officer / management officer program, with a long term view of enhancing the traditional resource management skills of Aboriginal people with contemporary natural resource management skills.

It is essential in the medium to longer term that Aboriginal people have not only the opportunity, but also the capacity, to be involved in contemporary natural resource management, compliance and research fields to ensure effective representation in issues such as resource allocation debates.

The longer term vision of this proposal is to provide opportunities for the development of Aboriginal people as future natural resource managers and leaders, a key outcome of the Aboriginal Fishing Strategy.

The program will focus resources on quality training to provide opportunities for those who wish to move into high level management and leadership positions within the fishing sector. The program should consist of a two-year traineeship in which participants will receive nationally accredited training in fisheries compliance, combined with extensive training and experience in policy development and management. The program should primarily be delivered through practical on-the-job training in compliance, education and fisheries management and administration.

This proposal would have medium and long-term benefits to both the Department of Fisheries and the Aboriginal community. These benefits include:

- Enhancing indigenous involvement in fisheries management;
- Creating employment opportunities and career paths for Aboriginal people;
- Capacity building within the Aboriginal community in natural resource management, community consultation, law enforcement, education, research and other varied skills that will assist in the management of fish resources;
- Assisting capacity building and understanding within the Department of Fisheries about Aboriginal culture and interests;
- Assisting efforts for reconciliation;
- Enhancing consultation and relationships between the Department and Aboriginal people; and
- Meeting Aboriginal community aspirations and address recommendations of several national and State reports on the need to involve indigenous interests in fisheries management.

3.3.8.3 *Aboriginal Fisheries Wardens*

In addition to the traineeships, a further option is to establish and support Aboriginal Fisheries Wardens in the remote communities in the East and West Kimberley. The roles of these wardens would primarily be education and consultation, playing an

integral role in the involvement of Aboriginal people in the fisheries management process at community level.

The wardens would be provided with some training in fisheries compliance to allow for the collection of evidence and reporting of illegal fishing activity. However the wardens would not have the authority to exercise the powers of a Fisheries officer. Fisheries compliance requires extensive training and skills to ensure safe work practices while undertaking an enforcement role.

It would be essential to include mentoring and frequent visitation to ensure success of the project.

The Department should give consideration to joint training and employment of wardens with organisations that have compliance and Aboriginal community consultation roles such as the Department of Agriculture, Department of Indigenous Affairs, Department of Conservation and Land Management and local government.

Issues to note regarding this option include the aspirations of Aboriginal people in communities to have real jobs and not subsidised positions through the Community Development and Employment Project (CDEP) program. This is an important consideration for funding.

3.3.8.4 Cadetship Program

The National Indigenous Cadetship Project (NICP) is a Commonwealth Government initiative aimed at improving the professional employment prospects of indigenous Australians. The NICP is administered by the Indigenous Employment Branch within the Department of Employment and Workplace Relations.

NICP provides opportunities for indigenous Australians to gain the professional qualifications needed for a range of jobs in both the public and private sectors. It assists in matching students who intend on studying full time toward an undergraduate degree at university with employers who can give them work skills and professional employment experience.

Recommendation 22: To provide opportunities to build capacity of Aboriginal people in natural resource management the Department of Fisheries;

- a. 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.
- b. 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).
- c. Consider utilising the National Indigenous Cadetship Program.

3.3.9 Community Awareness and Education

Community awareness and education are extremely important tools in fisheries management. The following options for increasing community awareness were identified during consultation.

3.3.9.1 *Targeting the message to indigenous people*

Existing fisheries messages, educational material and information about management of fish resources needs to be targeted at Aboriginal people in appropriate forms, promoting *fish for the future*, sustainability, fishing rules and why they are there and who to ask for information about fishing. Current information is not suitably targeted.

Examples can be found in existing promotional programs developed by Aboriginal people including Aboriginal health and education programs.

3.3.9.2 *Message delivery and spokesperson*

It has been suggested that educational information about sustainable fishing could be developed as a joint message from traditional owners and the Department of Fisheries. Instead of the message of *fish for the future* coming from the 'government authority' responsible for enforcing the legislation, it should be a joint message from the traditional owners of the area and the Department of Fisheries, indicating customary and contemporary stewardship responsibilities working together.

As an extension of the joint messages, an Aboriginal spokesperson for sustainable fishing to assist the Department of Fisheries could also be identified for articles and advertisements. This would also assist in raising awareness of Aboriginal culture and fishing. The Water Authority of Western Australia and Department of Agriculture have run similar programs successfully in Western Australia.

3.3.9.3 *Liaison – a conduit between the Department of Fisheries and the community*

Another option suggested that links with the Aboriginal community warden program outlined in Recommendation 27 is the training of proposed wardens as a conduit and contact point between Aboriginal communities and the Department of Fisheries.

Funding is a consideration for this particular option. Joint funding with other organisations such as the Department of Agriculture and the Conservation and Land Management Authority may provide opportunities for liaison officers in communities based on natural resource management programs.

3.3.9.4 *School programs*

Children under the age of 15 make up about 40 per cent of the Aboriginal population (ABS, 2001 Census). Providing information to children in schools is an excellent way to get information to parents and older generations as well, according to Aboriginal people. It is obviously also important to educate children and future generations about sustainable fishing practices.

Existing schools programs developed by the Department of Fisheries should be modified if necessary to be more targeted toward Aboriginal children. Distribution of the school fishing programs should also be targeted to ensure Aboriginal community schools are included.

3.3.9.5 *Volunteer Fisheries Liaison Officer (VFLO) Program*

Volunteer Fisheries Liaison Officers (VFLOs) are people from the general community who wish to assist in the of quality fishing into the future. Their role includes the promotion of fishing conservation ethics, raising of awareness and support for fisheries management. They often assist in fisheries research programs, provide advice to recreational fishers about rules and provide a valuable avenue of communication between recreational fishers and the Department of Fisheries.

VFLOs have proved very successful in these roles and can take a great deal of the credit for community support for conservation of fish stocks, and community acceptance of personal responsibility for the aquatic environment.

The VFLO program represents an opportunity for Aboriginal people interested in the long term sustainable use of fish resources to be involved in spreading fish conservation messages to the broader community.

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

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

3.3.10 Cultural Awareness

Appropriate and locally relevant cultural awareness training is an integral part of ensuring greater recognition and understanding of Aboriginal fishing and related issues.

One of the most consistently raised issues resulting from consultation is the need for cultural awareness training for Department of Fisheries staff. Aboriginal people see this as a key opportunity to avoid confrontation. Relevant cultural awareness information should also be provided and promoted to other fisheries stakeholders.

This is consistent with the *Western Australian State Sustainability Strategy – Focus on the Future*, which proposes to “expand indigenous cross-cultural awareness training within the Western Australian public sector for all employees who have

involvement with indigenous people or are involved in indigenous policy.” (Government of Western Australia, 2002).

Recommendation 24: Cultural awareness training is made compulsory for all full time Fisheries officers and Fisheries managers.

3.3.11 Recognising Aboriginal People In Fisheries Research

Indigenous knowledge is a relatively untapped source of valuable information that can be used in the development of everyone’s understanding of fish resources. Joint or partnership research programs should be encouraged and developed whenever appropriate to allow for the exchange of information and incorporation of traditional knowledge.

The Fisheries Research and Development Corporation (FRDC) have a specific program area relating to indigenous fisheries research.

In addition to identifying opportunities to work with indigenous interests in the development and carrying out of fisheries research projects, there is a need to identify research needs resulting from Aboriginal fishing practices or ventures. As an example, research is required on species such as trochus and mud crab, which are commercially fished by Aboriginal communities.

Consideration must be given to the following issues when dealing with Aboriginal interests for fisheries research projects:

- Care must be taken to ensure information is collected in culturally sensitive and appropriate ways;
- The research methods, rationale and what the information will be used for must be transparent to the Aboriginal community; and
- Ownership of the information needs to be clearly established and understood before beginning the program.

Recommendation 25: 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/ventures, and whenever appropriate research programs explore opportunities for the exchange of information and incorporation of traditional knowledge.

3.3.12 Aboriginal Fishing Unit

One of the key issues identified in the Commonwealth Resource Assessment Commission’s Coastal Zone Inquiry (1993) is a lack of policy development and management expertise devoted to indigenous fisheries by fisheries management authorities.

Consistent with this finding, Working Group consultation identified a desire by Aboriginal people to have established in the Department of Fisheries an Indigenous Fisheries Unit or program. The purpose of this program would be to develop policy and management arrangements consistent with the final outcomes of this report and ensure representation of Aboriginal interests in fisheries management making structures.

The Working Group will, during the public consultation phase, develop an implementation plan that includes anticipated work programs to be undertaken and an adequate resource base to ensure strategies can be developed. This implementation plan will be provided to the Minister for Fisheries, along with changes resulting from public consultation, as part of the final report.

Because issues relating to indigenous fishing will be a 'new initiative' within fisheries management, they have not been factored into budgets and with limited funding it is difficult to resource during the transition. Additional, external resources may need to be identified in the interim, and for the speedier implementation of key initiatives over the longer term.

Commercial and recreational fishers, through licence fees and other cost recovery mechanisms, contribute approximately 45 per cent of the budget for the management of fisheries in Western Australia. This allows for greater management, research, education and compliance services to those sectors.

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

3.3.13 Native Title Determinations And Sustainability

In the case that native title allows unsustainable fishing practices, the sustainability of fish stocks may be threatened. The preferred action in such a case is consultation with native titleholders to develop a workable solution, which may result in amendments to fisheries legislation or alternative agreed management arrangements.

If it is the case that native title determinations are made that are in direct contravention of the objects of the *Fish Resources Management Act 1994*, threaten the sustainable use of fish resources and a workable solution can't negotiated with native title interests, consideration must be given to legislative procedures to ensure the protection of fish stocks. This may include the development of fisheries legislation that over-rides native title determinations and may lead to the payment of compensation to native titleholders.

Recommendation 27: 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 titleholders.

SECTION 4 ECONOMIC DEVELOPMENT

4.3. Options

4.3.1 Support Services And Capacity Building

It is well documented that as a group, Aboriginal people face many disadvantages in their attempts to compete successfully in business and achieve financial independence.

Many Aboriginal people and groups wishing to operate successfully in the fishing sector (including commercial fishing, aquaculture and aquatic charter tours) require not only the means to gain access to the industries, but support to assist them to be competitive within those industries. This support includes training, business planning, funding and administration.

There are a number of existing programs, funds and services available to assist Aboriginal people to overcome disadvantages they face in successfully competing in commercial ventures. These are provided by a number of government and non-government organisations including ATSIC, the Office of Aboriginal Economic Development, TAFE and the Department of Training. The fishing industry with its expertise built up over decades also has an opportunity to play a key role in Aboriginal economic development.

To ensure the best opportunity for Aboriginal people to succeed in fishing related enterprises, strategies to coordinate the provision of existing training, funding and planning services specifically targeted at Aboriginal interests that gain access to the fishing sector are required.

These strategies may include a Memorandum of Understanding between relevant service providers or one organisation playing a coordinating role for specific fishing related projects. The Office of Aboriginal Economic Development is a Government department that provides advice and assistance to Aboriginal clients wishing to initiate businesses and may be best suited to have a coordinating role in the integration of the services outlined above.

Recommendation 28: A coordinated approach to the identification and provision of relevant existing business, training and funding support services is 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.

4.3.2 Social Objectives

It should be recognised that many Aboriginal communities wish to meet social as well as economic objectives. Social objectives include providing training, employment and incentive - particularly for young people - providing opportunities to become more financially independent and reasons for community members to remain 'on country' or in communities.

It is also important to recognise that the long term economic success of Aboriginal interests in commercial fishing, aquaculture and aquatic tourism may flow from pilot projects Aboriginal communities develop themselves and have 'ownership' of, and that are based more on meeting social objectives than economic objectives. It is important to foster development of these programs, including support for funding.

Funding is often limited to those projects that are able to demonstrate an ability to meet economic objectives and returns in a relatively short period of time. In addition,

proposals or projects developed by outside interests may not have the same level of 'ownership' required to sustain interest over the long term.

The WA Labor Policy Platform identifies the need to emphasise localised, small-scale economic programs for Aboriginal community training and employment.

Recommendation 29: 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.

4.3.3 Commercial Fishing

Aboriginal people wish to participate in the commercial fishing sector for many reasons, including financial independence and self determination, employment opportunities, and the opportunities that involvement in the fishing industry can provide in terms of having a greater say in the management of fish resources.

The clear impediment to Aboriginal people wishing to participate in the commercial fishing sector is gaining access to commercial fishing authorisations. These are generally transferable, limited in number and as such gain a value that is determined by market forces. The value of commercial authorisations can range from tens of thousands to millions of dollars.

It is not possible to create new commercial fishing licences as most commercial fisheries are fully utilised, and any further fishing effort would jeopardise the sustainability of fish stocks.

Consultation has identified two commonly suggested options for Aboriginal people to gain access to commercial fishing licences, through buy-backs (reallocation) or by purchasing licences on the open market.

4.3.3.1 Buy-back

Buy-back programs have been used to reallocate commercial fishing licences to indigenous interests in other countries such as Canada. Buy-backs are used in Western Australia to remove commercial fishing authorisations from fisheries for the benefit of others, including recreational fishers, not to reallocate those authorisations to another commercial interest.

A buy-back to remove commercial fishing authorisations from existing licensees and grant them to Aboriginal commercial fishing interests is not a preferred option for the following reasons:

- Any reallocation of commercial fishing authorisations through a buy-back will require compensation to those that currently hold the authorisations;
- The process required to undertake such a buy-back scheme would be time consuming, potentially litigious, and requires significant administration;
- As buy-backs are generally voluntary there is little choice in which licences would be available. Usually it is only licenses that are the least economically viable which will be surrendered for buy back; and

- Such a scheme may result in a negative response from the commercial fishing sector. Support from the commercial fishing sector (e.g. industry infrastructure, processing, transport, training and other services) will be crucial to the success of any new Aboriginal fishing businesses.

4.3.3.2 *Open Market*

The preferred option for obtaining commercial fishing licences for the benefit of Aboriginal interests is through an open market process. Transferable commercial licences can be purchased and sold on the open market.

The use of existing market mechanisms instead of government intervention to gain access to the commercial fishing sector is preferred. This option is more likely to be generally supported by the commercial fishing industry, is consistent with the existing economic system that has developed and evolved in Western Australia, and there is greater choice in licences.

In order for indigenous interests to gain entry to licences on the open market, funding is required.

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

4.3.4. *Indigenous Fishing Business Fund (the Fund)*

An option to overcome the cost of entry into commercial fisheries is to establish a fund that can be used to purchase transferable fishing authorisations for the benefit of Aboriginal people.

The rationale for the establishment of a fund is consistent with:

- State Government Aboriginal Economic Development responsibilities and objectives, included in *A Strategy for Responsive State Government Services and Programs*, which states: “*the Government will assist in improving access to capital for Aboriginal economic projects*”.
- *The Commitment to a New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians*. In particular, recognition of the enduring legacy of economic and social disadvantage that many Aboriginal people face and that the continuing rights and responsibilities of Aboriginal people should be accommodated within the existing legal, political and economic system that has developed and evolved in Western Australia since 1829. That is, the establishment of a fund utilises the existing economic system of tradeable fishing authorisations and units on an open market system.
- The preamble to the *Native Title Act 1993* states that “*It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established*”.

to assist them to acquire land.” This notion should extend to the purchase of commercial fishing authorisations.

- ATSIIC’s *Aboriginal and Torres Strait Islander Fisheries Strategy*, an outcome of the *Royal Commission into Aboriginal Deaths in Custody*, objectives of which include: “*to promote greater involvement of Aboriginal and Torres Strait Islanders in sustainable fishing and aquaculture activities*”.
- The WA Labor Policy Platform which includes: “*encourage economic development in indigenous communities to increase employment and decrease welfare dependency; and identify and support commercial development opportunities for indigenous communities to encourage economic dependence, employment and training.*”

The fund requires a one-off establishment cost, and will continue to remain and hold value, either as cash or tradeable fishing units as its primary use would be to buy and sell tradeable items (transferable commercial fishing authorisations) that generally increase in value. It represents a low risk investment in Aboriginal economic development because the initial investment is not likely to depreciate and the investment should generally remain in the program in perpetuity.

Recommendation 31: An Indigenous Fishing Fund is created by the State Government to assist in the purchase of tradeable fishing authorisations on the open market for the benefit of indigenous Western Australians.

4.3.4.1 *Fund Contributors*

The establishment of a fund to purchase fishing business authorisations for the benefit of indigenous Western Australians is within the objectives and means of two key organisations, the State Government and the Aboriginal and Torres Strait Islander Commission (ATSIC).

In addition, the Indigenous Land Corporation, which administers the Indigenous Land Fund, has significant resources to purchase ‘land’. However, existing legislation under which the Indigenous Land Fund is established means the interests of the corporation cannot extend to water or include commercial fishing licences.

Other groups that may be able to participate in such arrangements include Indigenous Business Australia and the Commonwealth Government, which may wish to develop such a program on a national level, or contribute to State initiatives.

Recommendation 32: Contributions to the Fund be made by the State Government and the State seeks contribution on a matching dollar for dollar basis from the 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.

4.3.4.2 *Fund Administration and Allocation*

Consultation with Aboriginal groups and interests identified a key issue regarding equitable allocation of funds for the purchase of licences. Many Aboriginal people wish to ensure decisions about allocating licences be independent of Aboriginal organisations and native title to ensure fair and equitable access to all indigenous Western Australians.

For example, concerns have been raised that if native title claimants are responsible for decisions about allocations of funds, there may be limited opportunity for Aboriginal people who are not native title claimants to gain access to the Fund. The Fund should not be limited to native title interests for the same reason the establishment of a 'special fund' is contained within the preamble of the *Native Title Act 1993*.

The establishment of a Fund to purchase commercial fishing authorisations for Aboriginal interests is established to meet primarily economic development objectives, and therefore decisions should be made primarily on business principles. Decisions based on Aboriginal community organisation priorities or native title may not allocate licences to groups with the best chance to succeed in a unique and competitive industry.

Both the Indigenous Land Corporation and Indigenous Business Australia have been established to address indigenous fund allocation issues and it is recommended that Government give consideration to the structure, function, legislative establishment and current policies of these organisations in the development of the proposed Indigenous Fishing Fund.

Recommendation 33: 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 the Fund.

4.3.4.3 *Simplified Access to the Fund*

Aboriginal interests request that access to the fund by Aboriginal people be simple and without unnecessary conditions. Aboriginal people have raised concern about numerous programs established for the benefit of Aboriginal people that end up under-utilised because there are too many conditions and processes put in the way, reducing incentive to access the scheme. One of the results is that those Aboriginal people or communities with knowledge of application processes and systems successfully gain greater access to services.

Recommendation 34: Any Fund application process is as simple as possible while ensuring accountability and transparency.

4.3.4.4 *Incentive and Ownership*

There would be no guarantee of benefits to future generations of Aboriginal people if the Fund was used to buy transferable licences and grant them to Aboriginal interests (as opposed to an administrative body leasing them out), as those

Aboriginal interests may choose to sell the licence on the open market for short-term gain. If licences are granted from the Fund, there will be a diminished capacity for the fund to provide opportunities for future generations.

However, there needs to be incentive and ability for Aboriginal interests wanting to develop interests in the fishing industry for the long-term to own fishing authorisations.

For example, if after a specified period of time an Aboriginal fishing venture that has leased a commercial fishing licence from the Fund demonstrates that it can operate independently, competitively and with long-term objectives in mind, it should be given the opportunity to purchase or be granted the authorisation, or a combination of both. This could be achieved by creating links for such opportunities between the Fund and existing schemes such as the Commercial Development Fund or Small Business Development Fund through ATSIC.

Recommendation 35: 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.

4.3.4.5 Ensuring adequate resources to utilise authorisations purchased through the Fund

There is no point having a fund to buy licences for Aboriginal interests if those interests do not have the capacity or infrastructure to work those licences. For example, a licence is not useful if there are insufficient resources to buy the necessary fishing vessel and fishing gear. With an integrated approach to the provision of services, these requirements should be identified and assistance made available as appropriate. However, existing services may not always be able to meet the needs of some fishing ventures.

It is likely that larger capital and operational items such as fishing vessels and gear will require additional resources. In this case, it is recommended that a portion of the Fund be isolated and made available for purchasing operating equipment that is not obtainable through existing support services.

This approach is consistent with the revised *2001-2006 National Indigenous Land Strategy* (Indigenous Land Corporation, 2002), which has as a key policy, “*when the Indigenous Land Corporation considers land acquisition proposals, initial and ongoing costs are accounted for. This is so an integrated approach to economic development, maintenance and operational costs is achieved.*”

This portion of the Fund may be offered on a loan basis to ensure recovery of at least part of the fund used to purchase depreciating assets.

Recommendation 36: A portion of the Fund is 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 is considered on a loan basis to allow partial recovery of resources used.

4.3.5 Aboriginal Community Commercial Fishing Licences

Aboriginal interests have a history of commercial access to mud crab, beche-de-mer and trochus resources, primarily as a result of a policy developed in 1989 by the then Minister for Fisheries. This policy was developed, and has continued to be used, to provide remote Aboriginal communities with opportunities to be more financially independent. A copy of these policy guidelines is available at Appendix 4.

This policy has allowed for, but not secured, access to trochus, mud crab and beche-de-mer fisheries by Aboriginal interests. As a result access by Aboriginal interests can be marginalised if these fisheries become fully utilised by other commercial fishers with secure access arrangements. This results in failure of the policy and Aboriginal economic development objectives.

It is recommended Aboriginal interests within Aboriginal Fishing Area 1 be granted explicit allocations in each of the fisheries currently covered by the Aboriginal community commercial fishing licence policy. This should be done in recognition of the importance of fish resources to Aboriginal people in Aboriginal Fishing Area 1, the history of the existing Aboriginal Community Commercial Fishing Licence Policy, Aboriginal economic development objectives, and the need for security of access to ensure longer term outlooks by fishery participants.

The review of access arrangements should address:

- **Transferability:** Transferability of these authorisations must be carefully considered as Aboriginal economic development objectives will not be met if Aboriginal interests simply sell licences to other commercial interests. Limited transferability within the Aboriginal community from one incorporated Aboriginal organisation to another is recommended. This will require legislative amendment to give the Executive Director of Fisheries grounds not to transfer an Aboriginal community licence to a non-Aboriginal community group and National Competition Policy issues will need to be considered.
- **Lease:** The Aboriginal Community Fishing Licence Policy precluded operators other than Aboriginal community members from utilising the licence, which prevents joint ventures and other beneficial partnerships from developing. Provision should be made for lease ability.
- **Application and assessment processes:** Including, for example, timeframes for application and assessments; who is able to hold authorisations; how many authorisations should be issued; and what is required for assessments (for example, business plans).

More specifically, each of the existing fisheries should be addressed in the following manner.

4.3.5.1 Mud crab

The mud crab fishery is a key economic development opportunity for Aboriginal people for the following reasons:

- Aboriginal communities or outstations are physically located in many cases to make best use of the fishery in terms of fishing operations, transport and access;
- The fishery is located almost exclusively in intertidal waters in Aboriginal Fishing Area 1, where it is recommended Aboriginal interests have enhanced input into the protection and use of fish resources through joint-management arrangements;
- The fishery is under-utilised. Although a small number of commercial operators have held mud crab authorisations for several years, there has been very limited fishing effort or catches in the fishery by those authorisation holders;
- Mud crab ventures do not generally require large start up or capital resources;
- Markets are established and mud crab is a relatively high value species; and
- Expertise is readily transferable from industry in the Northern Territory.

To achieve the optimum economic, social and other benefits from the use of fish resources (object of the *Fish Resources Management Act 1994*), assist in meeting Government Aboriginal economic development objectives and to be consistent with rationale for Aboriginal Fishing Area 1, it is recommended the mud crab fishery be fully allocated to Aboriginal interests.

4.3.5.2 *Beche-de-mer*

The beche-de-mer fishery has been heavily utilised for many years in the Kimberley. This, and high costs of entering the fishery has generally precluded Aboriginal interests from gaining access under the Aboriginal Community Fishing Licence Policy. Instruments of Exemption have been issued pursuant to the *Fish Resources Management Act 1994* and in line with the Aboriginal Community Fishing Licence Policy for the take of beche-de-mer in Shark Bay.

Aboriginal interests should be granted an explicit allocation to the fishery based on the principle that access is currently available under the Aboriginal Community Fishing Licence Policy, Government Aboriginal Economic Development Policy and recognition of the rationale for Aboriginal Fishing Area 1, where most of the commercial beche-de-mer fishery is located.

Government may wish to use the allocation framework proposed under the Integrated Fisheries Management Strategy (Integrated Fisheries Management Review Committee, 2000) to determine the allocation and how it should be implemented.

4.3.5.3 *Trochus*

The trochus fishery is a small but important fishery to the historical participants (primarily the Bardi and Jawi peoples) that provides income, employment and social benefits. In recent years much of the responsibility for compliance, education and decisions on new management arrangements have been transferred to managing organisations within the Aboriginal communities participating in the fishery, primarily the Bardi Aborigines Association.

This co-management approach has been developed in recognition of the customary stewardship responsibility of the Aboriginal people who participate in the fishery (a

function of existing customary marine tenure) and the difficulties in providing compliance in the fishery as a result of its remote location.

The trochus fishery has been authorised by Instruments of Exemption under the *Fish Resources Management Act 1994* since the inception of that Act. Although these Instruments have permitted flexibility during the development of new management arrangements (including increased size limits and seasonal closures) and the devolution of management responsibilities under a co-management approach, they offer no security of access to the fishery.

It is recommended that the trochus fishery be appropriately authorised under the *Fish Resources Management Act 1994* to give greater security of access to the historical users of the fishery. The joint-management approach currently utilised to manage this fishery should remain and be formalised in an agreement between the Department of Fisheries and fishery participants.

Recommendation 37: Access by Aboriginal communities currently available under the Aboriginal Community Fishing Licence Policy is replaced as soon as possible with explicit allocations in Aboriginal Fishing Area 1. These explicit allocations should be transferable only 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
- Creation of a trochus fishery authorisation to secure access for historical participants in the fishery and formalisation of existing joint management arrangements.

4.3.6. Aquaculture

A National Aquaculture Development Strategy for Indigenous Communities in Australia (Lee and Nel, 2001), funded by the Commonwealth Government (Agriculture, Forestry and Fisheries Australia) and the Fisheries Research and Development Fund, contains a management framework and strategic plan for enhancing indigenous involvement in aquaculture in Australia. A summary of the recommendations of the strategy can be found at Appendix 1.

This report is supportive of the recommendations of *A National Aquaculture Development Strategy for Indigenous Communities in Australia*, and recommends that programs to develop aquaculture involving Aboriginal interests in Western Australia should be consistent with the Strategy.

There is significant work in progress in relation to Aboriginal involvement in aquaculture, particularly in the Kimberley, that has input from both ATSIC and the State Government, primarily through the Department of Fisheries. This includes the development of a multi-species hatchery in Broome and support for the Kimberley Aquaculture Aboriginal Corporation.

This report is also supportive of the work that is continuing with the Department of Fisheries in enhancing Aboriginal involvement in aquaculture in Western Australia. It is through the collaborative work undertaken by Department of Fisheries in the

regions working and developing regional solutions with Aboriginal interests that effective outcomes will likely be developed.

This report will not attempt to expand upon the work already being achieved through these initiatives, but will provide some comment on key issues raised by Aboriginal interests as a result of consultation. Key issues are summarised below.

- There should be greater emphasis placed on fostering projects that have been initiated by, or developed with, Aboriginal interests, rather than developing projects and finding an Aboriginal community to take that project on board. Ownership of aquaculture ventures by Aboriginal people is very important in ensuring retention of long-term interest, vital to aquaculture development success.
- Some small-scale aquaculture projects may only aim at meeting social objectives (such as employment and training to community members) when they are initiated. Where these projects have potential for economic viability they should be fostered, even if profit can't be demonstrated in the short term, in line with the WA Labor Policy Platform that identifies that it will emphasise localised small-scale economic programs for Aboriginal community training and employment.
- Joint venture or partnership projects, which are generally large scale, can benefit Aboriginal interests particularly where Aboriginal interests have land suitable for aquaculture. Joint venture interests provide expertise, finance and management, with benefits to Aboriginal interests being financial returns from the lease of land and the potential for employment and training. The Department of Fisheries may have a role in assisting Aboriginal communities to develop proposals for joint ventures to a stage where it is attractive to outside investors.
- The Department of Fisheries has a role in managing the expectations among Aboriginal interests about outcomes that aquaculture will provide in the short and long term by providing advice in initial stages of identifying projects as to realistic objectives.

Recommendation 38: 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.

4.3.7. Aquatic eco-tourism and charter fishing

Licences are required from the Department of Fisheries to operate aquatic tours. A number of Aboriginal interests have history operating aquatic eco-tourism or charter fishing operations. Several have applied under the new licensing regime.

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* guide the Executive Director to consider a number of

factors in relation to granting aquatic tour licences. It is recommended that Aboriginal interests that offer unique cultural fishing education and/or heritage services should be given additional consideration when applying for aquatic tour licences.

At this stage there is no impediment to granting aquatic tour licences that have a low impact on fish stocks. However, there is a limit on the number of licences available for fishing charters that target large numbers of fish for clients to take home. These licences may gain a value in the future as they are limited and transferable, much the same as commercial fishing licences. In this case the Fund established for purchasing commercial fishing licences should also be able to be used for purchasing aquatic tour licences.

The following options have been identified:

Recommendation 39: 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 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.