

DARWIN – CONSULTANCY (RFQFI-0029)

BLUE MUD BAY – STAGE 2

Final Report

***“Indigenous Consultation,
Engagement, Economic
Development and Co-Management
in the Northern Territory Fishing
and Seafood Industry”***

Prepared by



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Prior to 1985 Ken worked for 11 years as a field officer responsible for training and job creation projects at remote Indigenous communities. He holds a B App Sci (Fisheries) from the Australian Maritime College along with a raft of vocational level qualifications.



Glossary

Acronym	Description
ALRA	Aboriginal Land Rights (NT) Act
BC	British Columbia
BMB	Blue Mud Bay
BMB 1 consultancy	Blue Mud Bay Stakeholder Consultancy (NTG - D08-0553) Final Report July 2009
C-AID	C-AID Consultants
ESD	Ecologically Sustainable Development
FMC	Fishery Management Committees
FN	First Nation
FRDC	Fisheries Research and Development Corporation
FTO	Fishing Tour Operators
GVP	Gross Value of Production
IK	Indigenous Knowledge
MPA's	Marine Protected Areas
NPF	Northern Prawn Fishery
NT	Northern Territory
NTG	Northern Territory Government
NZ	New Zealand
NZ delegation	FRDC Final Project No. 2008/31. NT Fishing and Seafood Industry Delegation to NZ.
QMS	Quota Management System
RD&E	Research Development and Extension
SASB	Stand Alone Subsidiary Businesses
TOKM	Te Ohu Kiamoana
TOs	Traditional Owners
Treaty	Treaty of Waitangi
TWFC	Treaty of Waitangi Fisheries Commission

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1. INTRODUCTION

In line with the Northern Territory Government's (NTG) strategy for moving forward from the Blue Mud Bay (BMB) High Court decision of July 2008, C-AID Consultants (C-AID) was contracted to identify key factors for successful Indigenous economic development and possible models for consultation and engagement with the Indigenous sector on matters relating to fisheries.

In line with the scope of the consultancy this report includes case studies based on experiences in New Zealand (NZ), Canada, Torres Strait, Northern Territory (NT), Norway and Cobourg Marine Park. These case studies, along with findings from the multi-sector stakeholder delegation to NZ (NZ delegation) in 2008¹ and the Blue Mud Bay Stakeholder Consultancy Final Report of July 2009² (BMB1 Consultancy) provided substantial material for consideration when developing the findings and recommendations in this report.

The varied and extensive experience of the three consultants, who had input to the report, also provided a broad understanding of the fishing and seafood industry, the consultation processes and the issues involved in working with the Indigenous people of the NT.

The final report provides:

- a synopsis of the case studies (the full studies are included at Appendix I³)
- a possible model for consultation and engagement with the Indigenous sector on matters relating to fisheries and aquatic resource management
- an analysis of key factors for successful Indigenous economic development in the fisheries sector
- an assessment of the capacity of the Indigenous sector to co-manage projects relating to the management of fisheries resources at community/regional level.

The recommendations provided in this report will require a long-term commitment by all stakeholders and Government. It will not be an easy process, but full commitment will provide an opportunity for positive results.

¹ FRDC Final Report Project No. 2008/31. 'Moving to a common vision and understanding for equitable access for Indigenous, recreational and commercial fishers:-NT fishing and seafood industry delegation to NZ'.

² Blue Mud Bay Stakeholder Consultancy (NTG - D08-0553) Final Report July 2009. This NTG report included outcomes from over 70 meetings involving about 600 individuals. Information was sought on possible frameworks for enhanced recognition and management of customary fishing rights, greater involvement of the Indigenous sector in fisheries management and options for meeting the economic development aspirations of the Indigenous sector within the fisheries sector.

³ It is important to consider the full case studies as they provide context to the consultation and business models proposed in this report.

2. BACKGROUND AND SCOPE OF CONSULTANCY

The NTG contracted C-AID to assist in developing key elements of the NTG's strategy to move forward from the BMB High Court decision. John Christophersen of Reef-2-U and Ken Baulch of Realfish were engaged by C-AID to collaborate on the project.

This consultancy had clear boundaries. These were to build on the outcomes from the Government's Indigenous Fisheries Framework (Appendices II and III) and findings of the report prepared by C-AID in July 2009 under the BMB1 Consultancy, using a desk top and literature based approach, with limited field testing of the concepts and models developed.

Local, national and international case studies provided crucial background and learnings that were considered when the models and recommendations in this report were developed.

Outputs from the consultancy were an interim report (14 November 2009) which provided the case studies and a preliminary analysis of key learnings and this final report.

2.1. Consultancy Objectives

The objectives of this consultancy were to:

- a) develop a model for consultation and engagement with the Indigenous sector on matters relating to fisheries and aquatic resource management
- b) analyse and identify key factors for successful Indigenous economic development in the fisheries sector, including a capacity "audit"⁴ and needs analysis for commercial involvement in the sector.

In the context of (a) and (b) above, the consultants were requested to consider and report on the capacity of the Indigenous sector to co-manage projects relating to the management of fisheries resources at community/regional level.

3. METHOD

The consultancy had a four step process.

Step 1: Reengage with relevant stakeholders.

A number of key stakeholders were contacted by phone, email and face to face. This was to advise them of the scope of the new consultancy, the methodology and proposed outcomes.

⁴ The audit is only be based on the consultants knowledge and experience – no formal survey were carried out as part of this consultancy

Step 2: Case Studies

This phase saw the consultants produce and evaluate a number of local, national and international Indigenous case studies with a view to identifying drivers that have led to successful outcomes, and also those that may have contributed to unsuccessful outcomes. The case studies assisted in developing the recommendations in the final report.

Step 3: Analysis and Model Development

This phase saw the consultants:

- assess learnings from the case studies
- build on the information developed through the BMB1 Consultancy
- undertake limited engagement with key stakeholder groups
- develop an appropriate model for Indigenous consultation on fisheries resource management
- analyse and identify key factors relevant to successful Indigenous economic development
- assess the potential for co-management projects.

Step 4: Report and Recommendations

This phase saw the formal reporting of the findings.

4. SYNOPSIS OF CASE STUDIES

An interim report, focusing on Step 2 of the methodology (case studies), was provided to the NTG on 14 November 2009. The key aim of using case studies was to identify, and highlight, factors that lead to successes, and also those that didn't provide optimal outcomes for Indigenous people, Government, other stakeholders and the community at large.

To provide a range of views, case studies were developed that investigated relevant situations in:

- New Zealand
- Canada
- Torres Strait
- Cobourg Marine Park (NT)
- Indigenous Involvement In the fishing and seafood industry in the NT
- Norway.

A synopsis of each of the studies is shown in the following section, with the full studies included at Appendix I.

4.1. New Zealand

The NZ example is a very important case study as the Indigenous people of NZ, the Māori, have established an important role in NZ's fisheries due to their multiple interests as commercial players, customary users, and recreational fishers. They also maintain strong rights guaranteed under the Treaty of Waitangi (Treaty). The case study investigates consultative, managerial and economic matters in NZ, focusing on the interactions between Government and Māori, and Māori responses and actions arising from the 'Settlement' processes.

From an outsider's perspective the NZ model appears to have successfully increased Māori commercial participation along the supply chain, improved management contribution and input, recognised cultural needs, and incorporated traditional management tools.

After an initial legal challenge to the Quota Management System (QMS) and subsequent High Court ruling, the outcomes have generally been achieved through a negotiated process, with a view to resolving matters outside the court system. This process has provided quantifiable rights in the form of quota allocation, along with funds to allow ongoing growth and diversification of those assets, and the development of a strong financial basis for all Māori.

The High Court ruling recognising 'customary commercial rights' was a significant outcome, as it shifted Māori involvement from a purely ceremonial/subsistence right to recognition that customary rights were more, including commercial use.

The creation of the Treaty of Waitangi Fisheries Commission (TWFC) and then Te Ohu Kiamoana (TOKM) and the formal mandating process, with its requirement for sound governance, appears to have provided a means for the orderly distribution of settlement assets. Opinion in NZ is that if iwi⁵ use a model that separates the political arm from the business arm(s) of their operation, it is likely to be significantly more effective.

A further outcome is the formal recognition by the Government of the need to consult with, and take on board the view of Māori in respect to fisheries issues. However, it has been difficult for Māori society to agree to who can represent the collective point of view. This issue has partially been addressed by the creation of regional groupings or forums, made up of Māori fisheries representatives, plus the development of self managed Mātaitai reserves using Taiāpure (local Indigenous management tools). However, the use of, and incorporation of traditional knowledge and fishing practices into contemporary management regimes is still proving problematic outside of customary use.

Māori are now managing customary fishing within their own country, actively participating in commercial fishing, and are involved in wider fisheries management, with traditional management practices recognised in the contemporary management of fisheries.

⁵ *Iwi is a Māori term to describe tribal groups*

4.2. Canada

For many Canadian First Nation (FN) people⁶, fish is the most culturally vital item. It is reflected in their traditions, histories, and ceremonies with important physical, social, spiritual, and economic sustenance roles. Canadian FN people have an important role in Canadian fisheries, as they have multiple interests.

This case study investigates consultative, managerial and economic matters in Canada, with a focus on the province of British Columbia (BC). It looks at the interactions between Government and Canadian FN people.

The rights of Canadian FN people for food, social and cultural purposes have been recognised for a number of years, but their commercial rights have been much less clear. The 1999 Supreme Court ‘Marshall Decision’ established a communal right for FN people to earn a ‘moderate livelihood’ from commercial fishing. This in many ways provided Government with the impetus it needed to develop and increase opportunities for FN people to be involved in fisheries from a commercial and management perspective.

From the 1970s onwards the Government looked to acknowledge Indigenous rights and develop means to increase participation in the commercial fishing industry, and to empower FN input to management through a shared stakeholder process.

This was facilitated through a series of projects and programs, with significant resourcing, providing a step towards greater Indigenous capacity to engage in contemporary management and fishing, so as to realise economic and social benefits from the fishing industry. This process appears to have had some success, seeing FN people now being major commercial operators in BC, significant participants in the employment derived from fishing, and having a strong and legislated voice in the management of fishing.

The legislative approach undertaken in Canada, and the development of modern treaties, has shown that such an approach has the ability to provide certainty and opportunity for FN people, as well as other stakeholders into the future. On the other hand, the encouragement of the Canadian courts for Governments and FN people to resolve issues related to Aboriginal rights by negotiation, rather than litigation, appears to provide tangible outcomes for FN people and the community as a whole.

4.3. Torres Strait

Recent events in the Torres Strait provide a great deal of relevant information about fishing-related economic development in remote Indigenous communities and Indigenous involvement in co-management of commercial fisheries. While Torres Strait fisheries management arrangements are vastly different to those in the NT, there are similarities in the aspirations of the traditional inhabitants.

⁶ The terms *Aboriginal*, *Indigenous* and *First Nation People* are often used interchangeably in some references

The approach to management of fishing in the Torres Strait is unique in Australia. Since the mid 1980s the Commonwealth and Queensland governments have recognised that Torres Strait Islanders have rights both to participate in the management of fisheries, and to share in the economic benefits of commercial fishing in their region.

Fisheries in the region are managed by a statutory authority with significant Torres Strait Islander involvement. A significant proportion of commercial fishing rights have been transferred from non-Islander fishers to Islanders through government-funded buy-back arrangements. New management arrangements have led to improved health of fish stocks and many Torres Strait Islanders are now participating in commercial fishing.

Most Torres Strait Island fishing enterprises are small scale and the majority of commercial fishers work part-time only. This outcome has been criticised as a failing in the new arrangements. In fact Torres Strait Islanders should be free to determine their preferred commercial fishing business models based on their existing skills and resources.

4.4. Cobourg Marine Park

The consultation and negotiations undertaken at Cobourg during the development of management plans for the marine and terrestrial parks, took place in a very complex political, legal, social, economic and cultural environment.

The Cobourg experience has shown that even without significant legislative or judicial support, by acting with good will, Traditional Owners (TOs) and other user groups were able to negotiate a comprehensive agreement that enabled future management of the park for the benefit of all users.

Through a face to face approach and with determination, dedication, inclusion, cooperation and good will between TOs, Government and other stakeholders, a ground breaking, comprehensive, agreed position was reached on marine management. This was in spite of the groups initially having diametrically opposed views on a number of issues and being wary of each other's motives.

After a number of years of negotiation, this culminated in 2007 with the enactment of the *Cobourg Marine Park Plan of Management (CMPPM)*, complete with a multiple use zoning scheme to manage activities in the Marine Park.

The regional approach used at Cobourg provided a means to deal with fisheries management issues at a local level so that real or perceived issues could be addressed. Such an approach was an effective way to have real Indigenous input and participation into the consultative process.

4.5. Historical Indigenous Involvement in the NT Fishing and Seafood Industry

The recorded history of Indigenous involvement in the seafood industry predates European settlement by several hundred years. The most spectacular example was the export of trepang to Southeast Asia: a huge industry that took the form of a joint venture arrangement with Makassan fishermen. At today's prices, the industry was worth up to \$100 million per year. The industry today contributes approximately \$2 million to the NT economy.

The annual GVP⁷ of the seafood industry managed by the NT is around \$54 million, of which wild harvest contributes \$33 million and aquaculture \$21 million. In addition, the Commonwealth managed Northern Prawn Fishery (NPF), which extends from Cape York in Queensland to Cape Londonderry in Western Australia, is valued at around \$70 million⁸ GVP with a significant proportion of the catch coming from waters adjacent to the NT⁹.

Indigenous people currently own less than 2% of the licenses and make up less than 3% of the industry workforce. The declining participation rate over recent times has been caused in part by changes in the industry: more restrictive licensing; very high license values in closed fisheries; and the need to use high tech and intensive fishing methods to generate a reasonable return on a license investment. It seems absurd that such a valuable industry operates on the doorstep of coastal TOs and yet contributes nothing directly to remote community economies.

The customary sector of remote community economies currently accounts for 30% of economic activity while the market sector accounts for just 10%¹⁰. Many analysts of community economics overlook the customary sector and assume that increasing the size of the market sector is the most effective path to economic growth. Many major development projects that focussed solely on the market sector have failed in the past, perhaps because they lacked any strong connection with community life and values. Economic development strategies that are entwined with customary activities have a better record of success.

The customary sector interacts with the market and/or public sectors in many successful enterprises: art and craft production; land and sea management activities; and carbon credit production through fire abatement are a few of the better known examples. There is therefore good reason to incorporate customary sector activities when designing economic development projects in remote communities. This approach will at least ensure enthusiastic community support for the project.

Most analysts and legislators in Australia draw a clear distinction between customary and commercial fishing: customary fishing is for subsistence or traditional purposes, while commercial fishing is for economic gain. This interpretation is currently the case in the NT

⁷ Values based on 2008 NT Fisheries Status Report

⁸ Values based on 2007/08 information in www.afma.gov.au/fisheries

⁹ ≈30% of the banana prawns and ≈50% of the tiger prawns in 2008

¹⁰ Altman (2003)

where the *Fisheries Act* precludes any commercial activity unless a person holds a licence under the Act. The BMB1 Consultancy highlighted that Indigenous people feel that their customary rights are much more than for subsistence purposes, and include a traditional commercial component. A successful fishing-related economic development model might therefore incorporate aspects of both customary and commercial fishing.

There is a clear need to research the reasons behind the decline of Indigenous participation in the fishing industry. Pathways for remote community groups to again get involved in commercial fishing need to be identified. Establishing these pathways may require changes to fisheries management arrangements. There is enthusiasm for the establishment of commercial fishing projects in remote communities and it is important to find out how far this enthusiasm extends, and how it can be used to support economic development projects.

4.6. Norway

The Sami are Indigenous people of Norway. They live throughout the polar regions of Norway, Sweden, Finland and Russia's Kola Peninsula. They are traditionally nomadic and live off fishing in the fjords in combination with other trades.

After the transition of the Norwegian national commercial fisheries in 1990, from open access to a quota system, the fishing fleet was divided into two groups. In the offshore group the vessels received guaranteed individual quotas. The inshore group generally consisted of smaller vessels and this group was assigned a group quota, where once the total quota was reached, fishing was suspended regardless of whether each vessel landed any fish. The Sami fishery fell into the second category and were therefore negatively impacted by this decision as they didn't have the skills or capacity to compete for the quota.

There are increasing calls for greater recognition and protection of the Sami people. As a means to achieving this, the Sami parliament suggested regional fisheries management to help prevent their demise and preserve their lifestyle.

5. CONSULTATION AND ENGAGEMENT MODEL WITH THE INDIGENOUS SECTOR

5.1. Background

The BMB1 Consultancy identified the need for a greater level of consultation with the Indigenous sector, and that the existing level and processes involved in engagement with the sector were not providing optimal outcomes for the NTG, Indigenous people and other stakeholders, in respect to matters relating to fisheries resource management.

During that consultancy a large number of meetings were held and a common theme expressed by Indigenous stakeholders was the desire to ensure that the resource was managed in such a way that their children, grandchildren and future generations could enjoy

and use the resource to at least the same standard that they currently experienced, and if possible, for it to be improved. There was a strongly expressed view that there was insufficient acknowledgement paid to the long-term Indigenous management practices in place for coastal and marine resources, and there was a desire to have this Indigenous Knowledge (IK) incorporated into the day to day decision-making processes.

A large number of Indigenous stakeholders also expressed a desire to utilise a representative group of community recognised elders to develop Indigenous positions, and as a means to being intrinsically involved in the fisheries management process. It was also found that most coastal Indigenous communities had difficulties coming to terms with what may be alternative management practices, as many do not know what the contemporary ones are.

With this wish in mind, and cognisant of the NTG's stated desire, through their framework and guiding principles, to have '*real Indigenous involvement in management of fisheries*' the consultants sought a model that would provide real and meaningful engagement and also meet Indigenous peoples' aspirations. The NTG framework seeks to have:

- Indigenous inclusion in fisheries advisory processes
- the possible establishment of an Indigenous peak body
- an enhanced role for marine rangers
- capacity building and training in fisheries management
- support for monitoring and assessment of "priority" areas or species
- a recognised role for Indigenous people in managing sea country.

These are complex issues and may require variations in different regions, or under certain circumstances, to adequately meet all parties' needs. It must however also be acknowledged that many issues, especially those around 'Government granted rights' versus 'sovereignty' are unlikely to be resolved to a point where there will be 100% acceptance of the process and outcomes, regardless of how much consultation takes place.

5.2. Issues and Discussion

There are a number of issues with developing a cost effective, one size fits all model for Indigenous engagement and consultation in what is often considered an unstructured stakeholder group. Indigenous people however, believe they have an existing, long standing model in place, revolving around people in the community who have recognised and acknowledged roles in the decision-making processes for the use of and conservation of marine and aquatic resources. This group of people are seen by many as a means to link traditional knowledge with contemporary management.

A key point for the NTG to consider during this exercise is the need for there to be tangible and visible outcomes from any consultation. If this doesn't occur the process will falter and the level of Indigenous engagement will diminish very quickly. With that in mind, Indigenous people have clearly stated that they wish to have more than an advisory role in the

management and decision-making process; i.e. 'some level of control, not just a say'. This means that the Government must be able to clearly articulate what level, and in what circumstances a level of 'say' will be acceptable. To some extent this may require quite a fundamental change in philosophy when dealing with Indigenous people's wishes. This has been addressed in Canada and NZ by making it a legislative requirement to not only take Indigenous views on board, but to demonstrate why their wishes should not be taken onboard.

Effective consultation and engagement rely very heavily on the ability to have transfer (and understanding) of information and knowledge within and across sectors and Government. Language and communication problems have, in many instances, limited the effectiveness of information transfer. Often Government is unable to effectively and appropriately communicate their message to grass roots Indigenous people, many who do not have English as their primary language and have difficulty effectively understanding the information in the delivered format. Indigenous people also have trouble getting their views across due to language issues and the formats, processes and venues generally used. This can often lead to a level of dissatisfaction from all parties, and a disengagement from the process.

The complex and differing nature of the NT marine and coastal areas (e.g. eight bioregions under the NT Parks MasterPlan, plus those under the Commonwealth's marine bioregional planning process) and the marine resources managed under it, have lead to discussions about the merits (or otherwise) of a regional approach to management and consultation. If such an approach is to be considered in the future, consultation and engagement processes must be accommodating, and also ensure there is a consistent (and a complementary) approach from all regions to enable single and seamless management. In addition, the level of consultation and engagement required may also vary geographically for Indigenous people based on a range of factors, such as community capacity, status of fish stocks, level of interaction with other stakeholder etc. There may also be a graduated level of Indigenous engagement from inshore to offshore, with a greater need for engagement in areas that are impacted, on or near shore, compared to offshore areas.

An underlying factor when consulting or engaging with NT Indigenous people, especially registered TOs, is the Land Councils' mandated consultation role as part of their obligation under the *Aboriginal Land Rights Act* (ALRA). Most peak representative groups find it difficult to capture grass roots input, so mechanisms to allow this to take place, as proposed in this report, can be invaluable.

Although in most instances it is preferable to minimise the legislative framework around consultation, so as to allow processes to develop in line with best practices (not necessarily legislative requirements, which may be slow to react to stakeholder needs), there will most likely be a need to incorporate some aspects of any formalised consultative and engagement

process into legislation through the *Fisheries Act*, to ensure formal recognition of Indigenous roles and rights.

As previously mentioned, this is a complex issue and may require significant capacity building, resourcing, generous timeframes and ‘tweaking’ to achieve the NTG, Indigenous, and other stakeholder’s aspirations for real consultation and engagement in the fisheries management process.

5.3. Recommended Model

To address the issues identified above, comply with the NTG’s requirements, and meet Indigenous stakeholder’s aspirations, a model has been developed that:

- allows the use of the most appropriate language/processes during consultation
- uses existing models and acknowledges customary roles and responsibilities within a formal framework
- recognises and respects traditional management arrangements
- allows flexibility in roles
- provides two way transfers of information (bottom up and top down)
- expands the group of people to consult with
- uses culturally appropriate methods
- educates Indigenous and Non-Indigenous participants, and other stakeholders, on management practices (traditional and contemporary)
- allows a regional approach, if necessary ,to deal with specific issues
- builds capacity
- empowers Indigenous people through the process
- is a dedicated process for capturing and discussing fisheries and marine resource management
- provides Government with a mechanism to determine the level of decision-making it wishes to devolve, and under what circumstance¹¹.

The consultants have approached this task with the view that real and meaningful consultation is the desired outcome from the process. It proposes to achieve this through a multi-layer, bottom up approach with two-way feedback systems, using existing structures, processes and groupings where possible.

To ensure adequate take up of this, or any other consultative process, stakeholders need to be empowered and believe they are making a contribution to the process and that their views will be fully considered in the development of any final resolution.

The consultation model has four levels, with the Minister having the head of power under the *Fisheries Act* (see Figure 1 and Table 1 for further details). These levels are:

¹¹ the consultants suggest a Decision-Making Model, rather than an Advisory Model

Indigenous Clan Based Groups: Local Level (Level 1)

- This level of consultation interacts with grass roots Indigenous stakeholders and allows them to discuss and develop positions on aspects of the fishing industry and resource management at a local level, using existing culturally appropriate consultation methods
- Issues discussed can be in response to queries from other levels of the consultation model or from locally identified issues
- Discussions would cover the full range of issues in all fisheries, with a focus on resource management issues
- Information and views from this group feed into the next level of consultation and back to community members
- Based on traditional responsibilities, representative people from the Clan Based Groups would take views to the local Regional Group.

Indigenous Regional Groups: Regional Level (Level 2)

- This level of consultation provides a conduit and forum for both local issues and higher level issues to be discussed in a regional context
- Based on traditional responsibilities, representative people from the Clan Based Groups would take part in this forum
- Discussions and consultation would take place using culturally appropriate methods
- Discussions would cover the full range of issues in all fisheries with a focus on resource management
- Information and views from this group would feed into the next level of consultation as well as back down to grass roots (Clan Based Groups)
- Based on traditional responsibilities, representative people from the Regional Groups would take views to the Representative Group.

Indigenous Representative Groups: Representative Level (Level 3)

- This level of consultation provides a conduit and forum for local, regional and higher level issues to be discussed in a representative Indigenous context
- Based on traditional responsibilities, representative people from the Regional Groups would take part in this forum
- Discussions would cover the full range of issues in all fisheries with the focus on resource management
- Discussions and consultation would take place using culturally appropriate methods with a view to feeding information and views into the next level, the Fishery Management Committees (FMC), and also back down to Regional and Clan Groups
- Based on traditional responsibilities, a nominee from the Representative Regional Group would take views to the FMC.

Fishery Management Committees: Decision-Making or Advisory Level (Level 4)

- This level of consultation provides a conduit and forum for top down and bottom up issues to be discussed in a whole of fishery context (i.e. fishery specific)
- A nominee from the Representative Group would be involved in this forum along with those from the fishing sectors, Land Councils and Government
- English would be the primary language for meetings, with interpreters to be present if Indigenous participants deem it necessary to allow them to adequately express views and partake in discussions in language
- Processes more formalised to allow for the capture of outcomes for contemporary management purposes, but cognisance made to allow for traditional discussion processes to take place
- Specific timeframes for action and processes for decision-making in place to ensure outcomes are timely and representative
- Decisions, information and views from this process feed to the Minister and down through the process to grass roots.

This proposed model's primary focus is on long-term sustainable resource management, not the politics of fishing. This ties in very clearly with outcomes identified during the BMB1 Consultancy and from the NZ delegation, which both highlighted a desire by Indigenous people to be empowered, and for real engagement at a community level in the management process. This model allows such an approach. However there will be costs associated with its implementation and at times it may prove difficult or slow to reach decisions and there may be levels of conflict between groups, but a two-way flow of information with decision-making undertaken in such a way as to optimise input is considered essential. Training, capacity building, adequate resourcing, including for regional facilitators, and associated travel and meeting expenses are yet to be costed.

Initial consideration was given to utilising the marine ranger program/structure to facilitate this process, but the consultants have some minor concerns that as the rangers' primary focus is on conservation (i.e. the E of ESD), it may limit the development (the D of ESD) opportunities that could be generated through the engagement process.

The proposed model also allows for regional issues to be addressed by providing a process for meetings to be held in, or with, the Regional Groups. If management focus shifts to a more regional structure sometime in the future, this model can readily be adapted to allow such an approach to take place.

The consultants believe that this model should be investigated as a means to achieve the NTG and Indigenous stakeholder's aspirations in respect to fishery resource management consultation and engagement. If the model is supported in principle then further work can be conducted to determine appropriate regional groupings and associated costings.

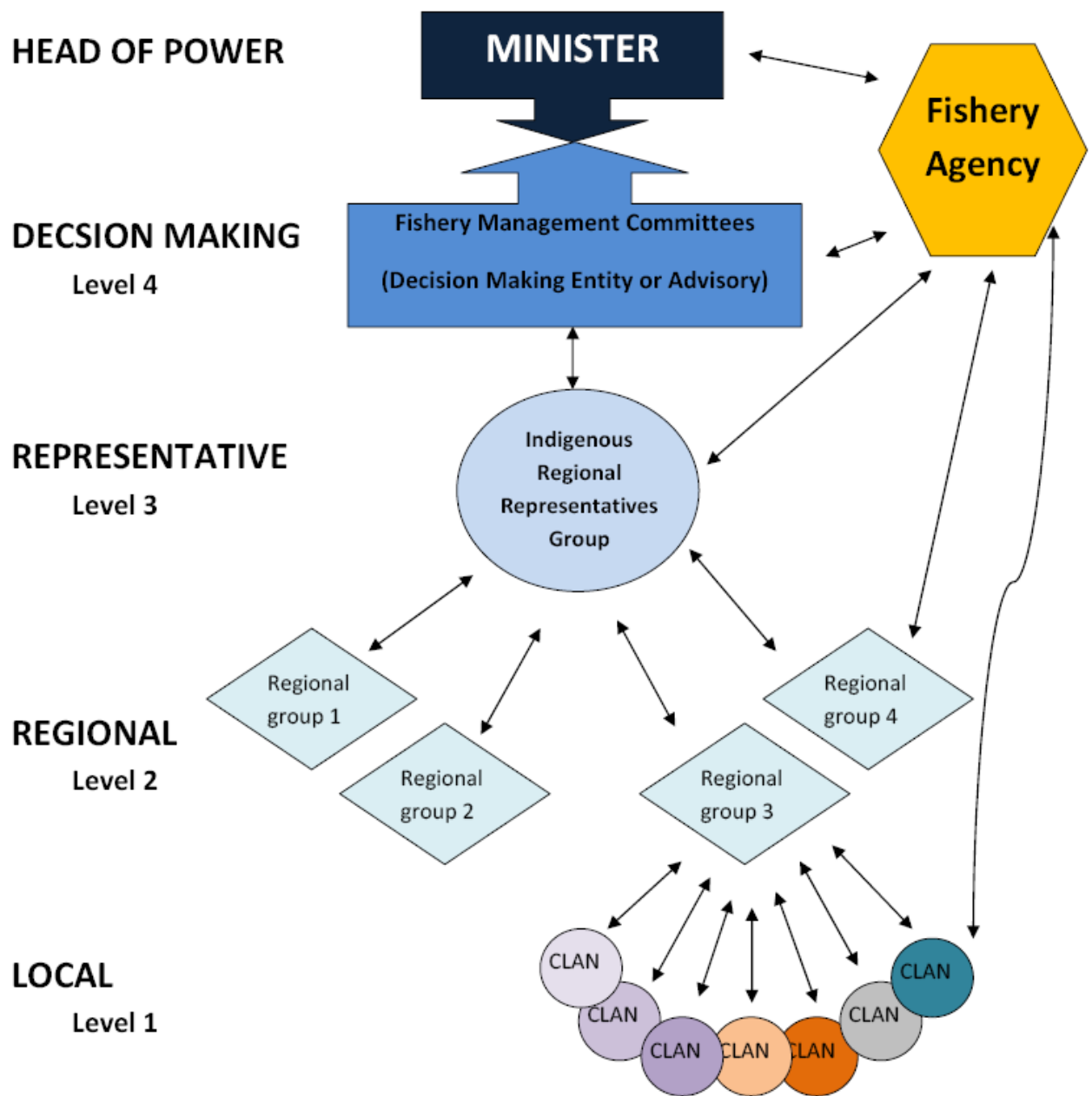


Figure 1: Proposed Indigenous Consultation and Engagement Model for Fisheries Management Purposes

Table 1: Supporting Information for Proposed Indigenous Consultation and Engagement Model for Fisheries Management Purposes

Group Name	Target Level	Role
Indigenous Clan Based Groups	Local Level 1	<ul style="list-style-type: none"> • This level of engagement is based on existing clans or groups • Meetings are held on country, in language and in such a way as to allow traditional discussion processes to take place • Each group could choose the most appropriate method for discussions – so long as the end result is such that it can be used as part of the larger consultation process • Groups are to manage and resource their own processes • Clans become empowered as they take responsibility for their level of involvement • No sitting fees applicable • Discussion can be based on local issues or those that have come down from the Minister, levels 4, 3 or 2, or from other level 1 groups • Allows very area specific matters to be discussed between clans and particular stakeholders, to deal with local issues • Customary or traditional fishing managed at this level, in consultation with regional (level 2) participants • Meetings would probably need to take place at least annually, once the initial BMB and other general fisheries matters are resolved. There will be a need for multiple meetings in the developmental stage • Discusses issues across all fisheries, where relevant • Positions or issues determined by clan • Regional (Level 2) Executive or Liaison Officer to assist in transfer of information • Based on traditional responsibilities, representative person/s from the Clan Based Groups would take views to the Regional Representative Group
Indigenous Regional Representatives Groups	Regional Level 2	<ul style="list-style-type: none"> • This level of engagement is based on the current existing representative people, who can speak on behalf of clans in respect to fishery issues in a regional context • Agreed representatives from each clan (some clans may prefer to send one representative to cover a number of clans) come together to discuss issues raised/resolved at Level 1 meetings • Somewhere in the vicinity of 5 to 7 regional groups may be required • Discussion can be based on local issues or issues that have come down from the Minister, level 4, 3 or 2, and from level 1 meetings • Meetings held on country, in appropriate language(s), and in such a way as to allow traditional

Group Name	Target Level	Role
		<p>discussion processes to take place</p> <ul style="list-style-type: none"> • Each regional group could choose the most appropriate discussion method – so long as the end result is such that it can be used as part of the larger consultation process • To assist in facilitating meeting, arrange travel and to ensure discussion items are captured and optimal participation is possible, a ‘resourced’ Executive or Liaison Officer (EO or LO) would be necessary • Regional groups become empowered as they take responsibility for their level of involvement • Adequate funding may be necessary to assist with travel and meeting expenses • No sitting fees applicable • Customary or traditional fishing managed at this level based on Clan (level 1) requirements – (as per NZ model adjacent clans may be required to agree on proposed measures) • Allows issues/matters to be discussed with other stakeholders to deal with regional issues • Discuss issues across all fisheries, where relevant • Positions or issues determined by group • Meetings may take 1-2 days each • Meetings would probably need to take place at least annually, once the initial BMB and other general fisheries matters are resolved. There will be a need for multiple meetings in the developmental stage • Based on traditional responsibilities, representatives from the Regional Groups would take views to the Representative Group
Indigenous Representatives Group	Representative Level 3	<ul style="list-style-type: none"> • This level of engagement is based on a nominated representative from each regional group (level 2) who can speak on behalf of the region in respect to fishery issues in a broad context • The total number of representatives would depend on the number of regional groups (possibly 5-7?) • To facilitate discussions it may be appropriate to also have observers from the regions attend to support, or assist, the nominated representative • Regional groups become empowered as they take responsibility for their involvement • Discussion can be based on local issues or issues that have come down from the Minister, or level 4, 2 or 1 meetings • Meetings generally held in Darwin or other major centre • Primary language for meetings determined by participants with interpreters to be present if participants deem necessary (through liaison with EO/LO) to allow them to express views and be

Group Name	Target Level	Role
		<p>involved in discussions in language</p> <ul style="list-style-type: none"> • Processes more formalised to allow the capture of outcomes for management purposes, but cognisance required to allow for traditional discussion processes to take place • Funding would be necessary to assist with travel and meeting expenses • EO/LO to assist in facilitating meetings and to arrange travel in liaison with NTG staff • Nominal sitting fees applicable • Meetings generally take 1 day, but provisions should be made for an additional day, to allow Indigenous members to discuss issues out of session or overnight • Allows Indigenous matters to be discussed with particular stakeholder(s) to deal with broad issues • Discuss issues across all fisheries, where relevant • Positions or issues determined by group • Meetings would need to take place at least annually once initial process involved in resolving BMB and other general fisheries matters are resolved. There will be a need for multiple meetings in the development stage • Based on traditional responsibilities, a nominee from the Representative Regional Group would take views to the FMC
Fishery Management Committees (FMC)	<p>Decision-Making or Advisory?</p> <p>Level 4</p>	<ul style="list-style-type: none"> • Stakeholders have expressed a desire to see a greater role for themselves in the decision-making process. Government may choose to limit the role of this committee to that of an advisory nature, as is currently the case, or a decision-making entity • Fishery specific discussions - based around existing fishery advisory committees, especially those relevant to Indigenous coastal communities (e.g. barramundi, mud crab and coastal) • Fisheries without an existing committee will need to be addressed separately e.g. Trepang • Longer term, FMC could possibly be reduced to three, based around intertidal, inshore and offshore fisheries • This level of engagement is based on a nominated representative from the Indigenous Representative Group (level 3), who can speak on behalf of the representatives in respect to specific fishery issues in the broadest context • To facilitate discussions, it may be appropriate to also have observers from the representative groups to support or assist the nominated representative – and build capacity • Representatives from other stakeholder groups are in the Level 4 group. Possible make up of the FMC could be:

Group Name	Target Level	Role
		<ul style="list-style-type: none"> ○ Independent chair ○ Land council representative(s) to comply with role under the ALRA ○ Commercial sector ○ Recreational sector ○ Charter sector ○ Government representative/s ○ Indigenous coastal resource management representative (nominated by Indigenous people from Level 3) ○ An appropriate number of observers • Meetings generally held in Darwin or other major centre • English primary language for meetings, but interpreters to be present if Indigenous participants deem necessary (through liaison with EO/LO) to allow them to adequately express views and partake in discussions in language • Discussion can be based on issues from any level or from the Minister, with the agenda set by agreement • Processes more formalised to allow for the capture of outcomes for management purposes, but cognisance made to allow for traditional discussion processes to take place • Specific timeframes for action and processes for decision-making in place, to ensure timely and representative outcomes take place • EO/LO to assist in facilitating meetings and to arrange Indigenous travel in liaison with NTG staff • Funding necessary to assist with travel and meeting expenses • Nominal sitting fees applicable for all non-government, agency or paid sector representative members • Meetings generally take 1 day, but provisions should be made for an additional day to allow Indigenous members to discuss issues out of session or overnight • Positions or issues determined by group • Meetings would need to take place at least annually once initial process involved in resolving BMB and other general fisheries matters are resolved. There will be a need for multiple meetings in the development stage
Minister	Head of Power	<ul style="list-style-type: none"> • NTG retains role as legislator

6. KEY FACTORS FOR SUCCESSFUL INDIGENOUS ECONOMIC DEVELOPMENT

6.1. Background

Economic development is brought about by successful policies and programs that improve the quality of life in a community. Economic well-being refers to levels of wealth and prosperity for individuals and communities. It derives from opportunities for employment and/or income producing enterprise on one hand, and access to affordable and relevant goods and services on the other. While economic well-being contributes to quality of life, other factors like freedom, autonomy, health, happiness, recognition and social inclusion are equally important.

Economic well-being can be measured using readily available objective economic indicators: the amount of money that a person has, along with the cost and availability of goods and services. Evaluating other more contributors to quality of life is much less straightforward and relies on subjective assessment of a range of social indicators. This often leads to policies and programs being designed to address the readily available economic evidence while overlooking other less tangible measures. There are many examples in the Indigenous community (and most other communities) of improved economic circumstances failing to lead to a better quality of life. ‘Throwing money’ at development problems rarely leads to long-term success. Effective solutions invariably come from within a community, and they address more than just economic well-being.

The desire to see increased economic opportunities from Indigenous involvement in the fishing and seafood industry was clearly identified as a key goal for coastal Indigenous people through the BMB1 Consultancy. The major focus was around establishing commercial wild harvest fishing enterprises. Economic opportunities exist beyond this, with potential all along the seafood supply chain, and in aquaculture, recreational fishing access, fishing tour operations and in providing fisheries management, compliance and RD&E¹² services.

The consultants were tasked with identifying key factors for successful Indigenous economic development in the fisheries sector, including a capacity “audit”¹³ and needs analysis for commercial involvement.

As a first step, general commercial success factors were identified. Indigenous-specific factors were then identified, with consideration given to Indigenous perspectives on what may constitute success. Following that, sector by sector commercial opportunities in the fishing and seafood industry were assessed and success drivers identified. Finally, a brief

¹² RD&E - Research Development and Extension

¹³ The audit is only be based on the consultants’ knowledge and experience – no formal survey was carried out as part of this consultancy

capacity audit and needs analysis was undertaken based on the consultants' experience, and information gathered during the BMB1 Consultancy.

The case studies, the consultants' experiences, the BMB1 Consultancy, and the outcomes from the NZ delegation provided the basis for this section.

6.2. General Commercial Success Factors

As a first step to identifying key success factors for Indigenous business enterprises, it is useful to look at what factors lead to business success in the wider community. This is a complex area and the relevant literature is varied and extensive, but there are some common views as to what factors contribute to a successful business. Successful businesses invariably pay attention to most, or all, of these key areas:

- providing desirable, functional, cost-effective products or services
- identifying and exploiting competitive advantages
- building markets with satisfied customers
- focusing on profitability – controlling costs and maximising revenues
- developing strategic alliances and working relationship (including with regulators)
- having a productive and efficient workforce
- committing to quality assurance and continual improvement
- developing and following a successful, long-term business strategy.

Success often depends on a key person(s) having, along with all the critical skills and knowledge, an outlook based around self-belief and determination. Critical success factors include:

- having a sound business concept
- having a value proposition that identifies target customers
- having access to the necessary capital and other resources
- having relevant organisational capacity and production skills
- adopting realistic goals and timelines and ensuring they are clearly understood within the organisation
- knowing and understanding your strengths/weaknesses, and those of competitors
- adopting sound governance and business practices
- understanding the existing management and legislative framework
- analysing the business environment
- being fiscally prudent and managing costs
- focusing on quality and continual improvement
- developing a targeted sales and marketing program
- understanding and using relevant technology
- using the skills and resources of others
- having sound communication skills and systems
- having clarity of ownership and control of business and assets

- effective succession planning
- building capacity through training and learning
- investing appropriately in research and development
- learning from successes and mistakes.

External assessment of the degree of success of a business (large or small) is almost always based around analysis of financial performance, growth and stability. In larger businesses the key goals are usually described in financial terms: particular levels of profitability or growth.

In small business however there are often other success factors. Profitability is still important, but many small business operators are also driven by lifestyle factors such as:

- not wanting to work for others
- wanting to work from home
- a desire for community recognition and self-esteem
- using skills and knowledge effectively.

These are all common reasons for going into a small business, and for many people they outweigh financial performance when analysing success. Often a focus on these non-financial incentives and goals is a reason for the high proportion of small businesses that fail.

6.3. Indigenous Business and Definition of ‘Success’

When analysing success factors for Indigenous business opportunities in the fishing and seafood industry, it is important to consider Indigenous perspectives of success. As discussed above, business success in the wider community is generally seen in terms of profitability and financial stability. While external factors, such as environmental or societal impacts, have attracted more attention in recent times, they are not yet seen by the wider community as being of major relevance to the question of business success.

Like many small business operators, Indigenous people often look beyond simple financial outcomes when analysing the success, or potential, of an enterprise. For example, when considering options for involvement in the fishing industry, a large number of TOs see active involvement in management of fishery resources as being more important than establishing a profitable fish harvesting enterprise. Similarly Indigenous Canadians have expressed views that success is not primarily profit based, but is instead measured in terms of the level of legal and political jurisdiction derived, and the number of community members employed.

With respect to generating wealth from the industry, the major incentive is the potential to create employment for young people in their own country. Most Indigenous leaders are deeply concerned about creating employment and other economic opportunities for future generations. They are acutely aware of the overwhelming dependence on Government funding in community economies, and there is widespread concern about communities’ lack

of control over their own destinies. While fishing operations are seen as a potential source of employment; jobs in research, resource management and monitoring are seen as equally important avenues. Other opportunities identified include generating income from leasing licences as well as extending lease income through involvement in processing, marketing, logistics and managing, or operating, fishing ventures across all sectors.

Understanding these aspirations is crucial to the design of programs that will allow Indigenous people to benefit from their proximity to inshore fishing grounds, their proprietary interest in parts of those grounds, and their desire to be involved in the industry. It must be acknowledged that most Indigenous people aspire to something beyond purely financial success. These other aspirations are, for many, of greater importance than any immediate and short term economic return available from the fishing and seafood industry.

Successful Indigenous enterprises will need to have an acceptable balance between social and economic objectives. The balance and trade off between competing objectives will require careful management.

It must also be recognised that the skills and other resources necessary to establish and operate commercial enterprises are largely lacking, especially in remote communities. Development of successful enterprises will require substantial external support and a commitment to capacity building.

Although no information is readily available regarding the NT situation, Canadian and USA studies illustrate that factors influencing success in Indigenous business have the following characteristics:

- clear business objectives and strategic direction
- sound governance
- a functional and successful method for dealing with the separation of politics and business within the enterprise
- efficacy in the board make-up
- an impartial dispute resolution systems
- some level of genuine autonomy for Indigenous peoples
- greater independence from government
- sound and ongoing communication with the local community and other stakeholders on the business operations and performance.

6.4. Possible Commercial Opportunities in the Fishing and Seafood Industry

A number of opportunities exist for Indigenous people to benefit from economic development related to the fishing and seafood industry. These extend beyond simply catching fish for sale. A number of these options were highlighted in the BMB1 Consultancy and are expanded on in this report. They include involvement in the commercial supply chain, aquaculture, recreational and charter fishing, RD&E, management and compliance.

The following sections consider the history of Indigenous ventures, current opportunities across the industry and proposes a business model.

6.4.1. Recent history of Indigenous fishing and seafood enterprises in the NT

There have been many Indigenous fishing and aquaculture enterprises established over the years in the NT. Some enjoyed success over many years, while others have been less long lived and/or successful. Most of the more recent examples that enjoyed longer term success (more than five years) were community owned projects in the 1960s, '70s and early '80s. This coincided with a period when:

- licensing requirements and costs for fishing enterprises were much less demanding
- different fishing gear, such as fixed fish traps and gill nets, could be used
- alternate food sources were more limited
- Indigenous people had fewer income options.

In the mid to late 1980s, NT fisheries management changed direction from near open access to limited entry, fishery specific management arrangements. The purchasing of Aboriginal gill net licences as part of the early barramundi buybacks, along with the removal of fishing gear such as fixed fish traps, contributed to Indigenous participation in commercial fishing reducing to negligible levels. By the late 1980s there were no community fishing enterprises operating in the NT.

In more recent times there have been a number of commercial fishing enterprises established by Indigenous individuals and groups in both remote and urban areas. Establishment of these enterprises often involved substantial loan or grant funding, reflecting the current high value of commercial fishing licences or aquaculture set up costs. The pressures of servicing a loan or satisfying grant conditions often requires a more streamlined operation and more intensive fishing operations than had been planned. Most of these enterprises have failed or underperformed.

Currently there are just a handful of Indigenous operated fishing enterprises and very few Indigenous people involved in the industry at any level. Few Indigenous people have the skills required to obtain employment in the industry, and even fewer have the capacity to operate a conventional fishing business without significant training, capacity building and financial support.

A number of factors have contributed to the limited involvement and lack of success of Indigenous people in the NT fishing and seafood industry in recent times. Some of these factors are:

- the high cost and lack of the necessary capital and cash flow required to set up and operate a true commercial fishing or seafood enterprise

- tension between the need for profitable businesses and culturally driven work practices and aspirations
- increased income opportunities from other sources (even if limited, such as some form of welfare or CDEP)
- loss of access to earlier fishing arrangements and permissible fishing gear
- development of prescriptive and inflexible management regimes based around sustainability¹⁴ and input controls
- increased legislative and compliance measures (e.g. fisheries licensing, food and workplace safety requirements)
- a lack of real Indigenous involvement in the management process, and a subsequent disenfranchisement with the fishing industry
- greater access to non-traditional foods through supermarkets and takeaways
- the often very harsh and isolated working conditions in the fishing industry, and an unwillingness to undertake distant or extended fishing trips
- lack of appropriate access to relevant training or work experience necessary to prepare people for roles in the Industry (these include maritime skills, business management, marketing, mechanical and refrigeration maintenance etc)
- the loss of people in communities interested in steering operations, or championing commercial fishing as a viable option
- a lack of understanding of the potential for commercial gain through other opportunities in the fishing and seafood industry, such as access for recreational fishing, supply chain logistics and marketing.

The few successful enterprises have been able to address most or all of these matters. Successful operations often have a 'champion' – a key person who takes responsibility for driving the operation's success.

6.4.2. Factors associated with successes and failures

There is a plethora of literature outlining the barriers to successful Indigenous business enterprises, and unfortunately there is a paucity of solutions. **Error! Reference source not found.** shows a range of identified issues that may act as barriers to successful business development in Indigenous communities. Enterprises must therefore attempt to work around or through the identified issues, or alternatively seek innovative ways to address or incorporate them into the day to day operation of the business.

While a number of older community members have had some commercial fishing experience, an enterprise established today would most likely look to younger people as potential employees. Young people with no relevant skills and experience are unlikely to be

¹⁴ *An approach to seeking sustainable fishing is not being criticised, it is just a factor that has made it more difficult for Indigenous participation*

able to hold down employment or contribute to the successful operation of a conventional commercial fishing enterprise without significant assistance¹⁵.

Table 2: Barriers to Successful Indigenous Enterprise¹⁶

<p><i>High levels of conflict and mistrust</i></p> <ul style="list-style-type: none"> • Suspicion and lack of trust, between individuals in communities and of outsiders, including Government • Unresolved conflict around control of land and benefits • Institutional processes and legislation • Traditional and customary law protocols
<p><i>Socio-cultural norms and values</i></p> <ul style="list-style-type: none"> • Kinship and sharing • Cultural practices
<p><i>Lack of human capital</i></p> <ul style="list-style-type: none"> • Poor English and general lack of education • Lack of engagement with mainstream institutions • Inadequate governance and protocols • Reliance on outside professionals, including Government and the Indigenous support industry • Little business acumen • Burnout of individuals with capacity
<p><i>Institutional framework</i></p> <ul style="list-style-type: none"> • Confusing Indigenous services and program delivery • Land management and ownership • Protectionist policies • Dependency on welfare • Lack of separation of politics (internal and external) from business
<p><i>Economic and structural constraints</i></p> <ul style="list-style-type: none"> • Little incomes outside welfare • Inalienability of communal Indigenous land • Little/no collateral • Lack of business experience • Lack of infrastructure • Tyranny of distance

In most remote Indigenous communities there is no strong tradition of involvement in competitive, market economy enterprises. Few people grow up in an environment where they readily pick up the skills and attitudes that will easily lead to careers in a competitive, market-driven industry. The market sector of local economies is small and enterprises are generally managed by outsiders. Many apparently successful market sector enterprises (e.g. community stores, take away food outlets, mechanical service providers) are owned by non-commercial entities, and they often enjoy a monopoly position in the local market. As such they are not subject to the same levels of competition and market scrutiny as most other

¹⁵ it should be noted that this is the case for the majority of Non-Indigenous people as well

¹⁶ Table adapted from Nikolakis2008

enterprises, and their 'success' comes despite the inefficiencies that this allows. In many ways they do not groom people for success in the 'real world' of market driven private enterprise.

Most Indigenous seafood related enterprises in the NT are involved with fisheries or activities that people have some connection with, e.g. working in areas close to home, or working with familiar species such as crocodile or mud crab. Similar patterns are evident in Indigenous ventures in other places, such as salmon harvesting by Indigenous Canadians, or the fishing and farming of short finned eels by the Winda Mara people in southwest Victoria. Often these initial forays into commercial fishing have led to greater involvement in all aspects of the fishing and seafood industry. Good examples include Indigenous New Zealanders and Canadians who are now major participants in local seafood industries.

Experience in other jurisdictions clearly shows that Government support to acquire fishing access rights leads to increased involvement in the industry by Indigenous people. Strong examples of this have been seen in NZ, Canada and the Torres Strait. This approach, along with a range of support packages, has often seen significant returns and growth of the initial investment in the fishing and seafood industry, allied industries and in a range of diversified businesses. The NT is yet to see developments of this nature.

The lack of capital and capacity to obtain funding through normal channels means that Indigenous enterprises must often utilise Governments resources to start up businesses. However bureaucratic processes and the risk adverse nature of Government funding/support may in many instances restrict the enterprise development opportunities available to Indigenous people, and work against commercial realities, in a challenging environment. Research undertaken in the NT by Nikolakis in 2008, and supported by Canadian experiences, found that Indigenous businesses that had private funding, such as through a joint venture or private partnership, were more likely to succeed than those who only received government financial support. This may be as a result of the business acumen, capital, expertise and networks brought to the arrangement. As was stated in Nikolakis's thesis – 'Governments aren't necessarily good at business'.

Economic development projects that are associated with customary activities are rare, but where they have arisen there have been some spectacular successes. The production for sale of traditional art and craft objects generates substantial income and for many remote communities it is the only externally sourced private income. The marine ranger programs incorporate customary land and sea management practises with other forms of coastal ecosystem monitoring and protection. Marine ranger jobs are never difficult to fill. In a similar vein, there is rarely a shortage of candidates willing to participate in hunting, fishing, food gathering, looking after country/coastal waters, art and craft production and other traditional pursuits, regardless of whether or not the activity generates income.

Many major development projects that focus solely on the market sector (e.g. agriculture, aquaculture, horticulture, commerce) fail in Indigenous communities, perhaps because they lack any strong connection with community life and values. Despite very high levels of unemployment, it can be hard to fill job vacancies in some of these projects. Economic development strategies that are entwined with customary activities and traditional values may have a better chance of success. The challenge in the fishing and seafood industries is to incorporate customary activities and/or traditional values into project design and business operation.

6.4.3. Current economic opportunities in the fishing and seafood industry

In the following sections potential opportunities are identified on a fishing and seafood industry sector by sector basis, key factors to optimise success are identified, along with potential pitfalls.

6.4.3.1. wild harvest fishing

All NT fisheries are currently managed as limited entry licensed fisheries, with the majority being fully transferable (licencees are allowed to lease or sell licences/quota). The reported farm gate value (i.e. the gross return – before expenses are deducted) of NT managed¹⁷ wild harvest fisheries is in the vicinity of \$33 million annually, of which around 50% comes from inshore or coastal areas.

A number of wild harvest fisheries may provide opportunities for significant involvement by Indigenous people, however the likelihood of significant major uptake of fishing/harvesting jobs is low. This is for many of the same reasons that few Non-Indigenous people wish to be commercial fishers: isolated existence, relatively low and uncertain income, lack of previous experience, uncomfortable lifestyle and accommodation, and the sheer hard work involved in working in the industry. Although a number of older Indigenous people remember fondly their time involved in fishing, times have changed, and the same incentives to be involved do not exist for the younger generation.

When fishing quota was first granted to the Māori, there was an initial surge in interest as many iwi¹⁸ purchased fishing vessels and equipment. It was soon found however that greater returns were possible by aggregating quota into larger holdings and using that power to optimise onshore opportunities in processing and distribution.

If Indigenous people in the NT gain significant commercial access rights, they would be best advised to lease a large part of those entitlements to specialist harvest operators and use their market power to participate in the processing or marketing sectors.

¹⁷ The Northern Prawn Fishery (NPF), which operates in waters off the NT and northern, WA and Qld, is managed by the Commonwealth and valued between \$60-70 million annually

¹⁸ Iwi are Māori tribal groups

The concept of leasing access rights is a sound practice and is a common business model in many fisheries, including most of the NT Mud Crab Fishery and a large percentage of the NT Barramundi Fishery. This approach will not provide a great annual return, with total lease fees for the two fisheries (if all licences were leased) being well under \$3 million per year.

To a large extent Torres Strait fishing enterprises have taken the leasing approach, especially with quota in the reef and Spanish mackerel fisheries. The Government bought back entitlements to these fisheries and transferred rights to Islanders (communities and individuals). Because Islanders generally lacked the equipment and infrastructure to fully utilise these licences, a number of entitlements have been leased back to previous owners. At this stage such an approach has two advantages: leasing generates a modest cash income for Islanders and allows long established markets to continue to be serviced and maintained. One downside to this approach is if quota is owned in small parcels, by a large number of individuals, as this tends to place market power in the hands of lessees; leading to lower lease prices and limited onshore supply chain benefits.

The real advantage from the leasing scenario arises when the onshore supply chain benefits accrue to those who manage or control the licences. The NT Mud Crab Fishery provides a good example of the benefits of this approach. A small number of operators control a large number of licences; guaranteeing them a larger volume of product and accruing the benefits of economies of scale and market dominance. This approach provides significant financial returns, and is seen as a sound business model.

Increased flexibility in the management arrangements could provide opportunities for Indigenous fishers at remote communities. Options that allow smaller scale operations with lower operating costs could lead to increased Indigenous participation. Smaller operations could target local community markets where they enjoy a significant competitive advantage, as opposed to the competitive disadvantage inherent in transporting product to distant markets.

A small scale opportunity exists to provide fresh seafood to communities on a commercial basis. Currently the majority of food sold in community stores and takeaways, including fish, is transported from Darwin. Simply developing a fishing and marketing model (fishing, processing, storing, transporting, distributing) to supply these stores would generate significant income and employment, and provide fresh product to communities.

A change in product form can also lead to increased returns without increasing catches. An example of this is in the NT Barramundi Fishery, which has traditionally produced frozen bulk fillets. A number of operators shifted to whole, or gilled and gutted, fresh fish on ice. This has led to an increased return per kilogram of fish caught, reduced operating costs (no need for freezers etc), shorter trip durations, and a product differentiated from the large number of other frozen fillets on the market. Such an approach may better suit community based

fisheries, and it is unlikely they would need, or be able, to operate full ten unit barramundi licences¹⁹.

Many people take the view that unless every licence owned by Indigenous people is being operated by an Indigenous person, the system has failed. This is an unrealistic expectation, especially initially. Operating profitably in a wild harvest fishery is a complex and challenging task requiring a broad range of skills and experience that will not happen overnight. Experience shows that with the proper training and experience, Indigenous Territorians can work effectively in commercial fisheries, but much of the necessary skill base has been lost over the last 20 years. Capacity needs to be rebuilt, and it will take time and require substantial resources.

In the short term, partnerships with the existing commercial fishers could offer many benefits including the transfer of skills and knowledge to the Indigenous sector, and maintenance of existing markets and operations under lease or joint venture arrangements.

Successful involvement in wild harvest fisheries, from an Indigenous perspective, will depend on a number of factors, including:

- ensuring that fisheries are sustainable
- developing ownership structures that protect licence values and have clear governance and operational roles
- understanding that fishing is only one part of the value chain
- acknowledging the high social value that Indigenous people put on involvement in the fishery, and clarifying the goal of this involvement (e.g. maximum economic return, increased employment, management input/control)
- assessing if the existing management regimes provide sufficient incentives and the operational flexibility that Indigenous operations may require, including the types of gear used
- developing methods to allow access to the fishery for Indigenous people through appropriate capital and funding
- developing processes to integrate local catch into the existing food streams on communities (health, logistics and onshore supply chain benefits)
- identifying existing capacity for involvement in wild harvest fisheries
- developing processes to identify and support fishing industry 'champions' in the Indigenous sector, to act as role models and leaders
- developing culturally appropriate mentoring, training, or work experience programs, to enable Indigenous people to be able to work in the industry, at more than the most basic of levels (including maritime skills, business management, marketing, mechanical and refrigeration maintenance)

¹⁹ The barramundi fishery has licences to which a specific number of 100m of net units are attributed. The majority are 10 unit licences (1000m of net) and these cannot be split into smaller units

- developing knowledge transfer processes from existing fisheries to Indigenous people
- ensuring engagement with, and involvement in the management process
- addressing the current legislative and compliance requirements
- developing sound business models that can be used in a number of business situations (from low level part-time to fully commercial operations).

6.4.3.2. aquaculture

The GVP of the NT aquaculture industry, including pearl production (valued at \$16 million), is worth in total around \$21 million annually²⁰. Stringent licensing conditions, through the Fisheries Group, are mandatory for involvement in the aquaculture industry.

The NT, through the Darwin Aquaculture Centre, has undertaken significant work on a range of species that are suitable for culture in the NT. These include reef fish species, trepang, prawns, sponges, freshwater crayfish, mud crab, barramundi, pearl oyster and microalgal species.

TOs are well placed to play a major role in the development of aquaculture in the NT, in that they hold tenure over a very large proportion (85% +) of the NT coastline, extending to the low water mark.

Over time there has been some level of Indigenous involvement in the NT aquaculture industry through pearl farms, some barramundi operations, sponge farming and mud crab farms. At this time however there are no commercial Indigenous run aquaculture operations.

Some ongoing Indigenous interest in barramundi, mud crab, trepang, sponge and oyster farming has been expressed, and some of these ventures are in the planning and development phase.

Most aquaculture ventures are technically challenging with high risk and capital requirements. Profitability revolves around efficient production methods, streamlined and lean operations, efficient logistics, up to the minute market intelligence, astute cash flow management and business skills, with a fair dose of good luck. Aquaculture is not a business venture for beginners without access to expertise and management skills. It would be a very high risk option for Indigenous people to go it alone in such ventures.

To minimise Indigenous people's exposure in high risk, fully commercialised aquaculture businesses, it would be best to seek to develop joint venture projects preferably with Indigenous groups providing farm sites and joint venture partners providing capital and expertise.

²⁰ Values based on 2008 NT Fisheries Status Report

As part of its 'Farming our Future 2005-2010' policy, the NTG sought to develop an inventory of all areas suitable for aquaculture development in the NT, with the initial focus on the Darwin and Bynoe regions. This program needs to be extended to other regions of the NT, to develop an inventory of resources available for aquaculture development in each of the regions, especially in Indigenous managed areas. This will provide an opportunity for investors and Indigenous people to develop potential aquaculture ventures.

Some lower technology opportunities exist for ranching style operations utilising a number of species. A number of problems remain to be solved with this concept, including translocation issues, ownership of stock if there are interactions with existing wild harvest fisheries (e.g. trepang or mud crab) and assessing the success or otherwise of the operation (i.e. good natural recruitment v stocking success). Although a 'high-tech' fishery, NZ's Challenger Scallop Enhancement Company²¹ addressed many of these problems by encouraging all the established quota owners in the region to work collectively to manage, enhance, ranch and harvest the scallops.

Many of the capacity building challenges identified for commercial wild harvest fisheries hold true for aquaculture as well, but there is also a need to develop specific skills around aquaculture operations. Many of these skills require some form of formal qualification, along with hands on experience. The benefits of joint venture arrangements are that these capacity building aspects can be incorporated into any agreements.

6.4.3.3. processing, marketing and logistics

The processing and marketing side of the wild harvest fishing and aquaculture industries provides economic and employment opportunities for Indigenous people all along the supply chain (e.g. logistic support, transport, processing and marketing). Estimates for employment opportunities arising from supporting, or as a flow on to seafood production, are at least double the number of those actually fishing.

Processing and marketing are complicated, but potentially profitable sectors, of the seafood industry. It is a very competitive area, and the market place is often oversupplied. This leads to continual pressure on margins, so operators must be very efficient to stay in business. Seafood, in many instances, is seen as a premier food and there is a degree of elasticity in respect to its demand; that is, a relatively small shift in price can lead to changes in demand, or shift to another product. Recent examples have seen the price of farmed Australian barramundi and wild harvest prawns fall in response to competition from imports and increases in value of the Australian Dollar, especially through the supermarket sector.

There are many alliances in the processing/marketing sector and they have been built up over generations. New entrants often find it difficult to compete, or gain a footing in the

²¹ *Scallop enhancement was initially a NZ Government program in response to a fishery collapse. With the advent of quota, responsibility was devolved to fishers who had become the quota owners and then Challenger share holders*

industry, and failure rates for new participants are high. Failure of new operators happens for a number of reasons, but generally involves:

- problems with maintaining regular supply of quality product at competitive prices
- poor positioning in the market place
- logistics problems
- inability to manage cash flow, or an insufficient line of credit, (many clients will have a 30-120 day account, whilst fishers/farmers expect payment within a week)
- inability to manage stock and associated wastage
- price cutting and competition in the market
- insufficient or poorly trained staff
- problems in general with running a business and associated poor management practices (e.g. tax, book keeping, food safety, OH&S, staffing, payment defaulters)
- problems outside of their control (e.g. Asian monetary crisis, 9/11, GFC) which severely impact on the ability or desire of consumers to purchase seafood (acknowledging that seafood is primarily a restaurant or prepared meal product).

This sector of the industry is not as easy to operate in as many people believe, but it does provide opportunities for employment (from part-time to senior management) and diversification of product lines. Having the ability to value add to your own caught product through the supply chain can provide significant financial rewards.

From an Indigenous perspective, there may be some long-term benefits in developing an 'Indigenous' fish brand that becomes synonymous with 'clean, green and sustainably' caught or produced seafood.

Māori entered this sector of the seafood chain as part of their settlement with the NZ Government when they received significant holdings in seafood companies; Sealord's, Moana Pacific and Prepared Foods. These businesses had strong business plans and staff in place at the time of Māori involvement. They have now grown further, are vertically integrated, and have developed strong alliances with companies in Australia, USA, Europe and Asia. A clear message provided to the NT delegates to NZ was that there is a need to ensure that the best people are employed in all levels of the business, regardless of their cultural background. This was with a view that, in the longer term, if Māori received opportunities in all aspects of the operation, when they have sufficient education, skills and training, they would be in a position to take on all manner of roles in the companies.

As previously mentioned the possibility of developing seafood marketing opportunities in communities merits further investigation as part of any Indigenous economic development consideration.

Logistical support, especially for fishing ventures in remote areas of the NT, such as Arnhem Land, provides an ideal niche opportunity for Indigenous participation. The provision of supplies, crew, equipment and other requirements, along with transport of product back to

markets, provides a viable business if there are sufficient fishing operations requiring support. Transport in the NT Mud Crab Fishery provides sound business ventures for a number of operators, who charge to transport goods, fuel and product to and from Darwin. As fishing opportunities possibly develop (Indigenous or Non Indigenous) in or adjacent to Aboriginal land, transport options for fishers and aquaculturists will need to be a major consideration in their business decisions. A key aspect to achieving success in this field is reliability – in respect to vehicle/vessels, timing and provision of goods and services. Understanding all costs of operation (vehicle, depreciation, repairs and maintenance, insurance, fuel, wages etc) is a vital aspect, if a profitable business is to be developed.

To start up a new venture entirely in the marketing and processing sector would be high risk. Initially, successful involvement would most likely be enhanced by Indigenous people becoming involved in, or purchasing, an existing operation and gaining its suppliers, customers, business operating systems and arranging a process to transfer that knowledge. Exploration of servicing communities with locally caught product could however be investigated as a new venture. If a high level of Indigenous involvement is sought in these ventures, capacity building will be required across all levels of the operation. This can be achieved through a variety of forums, work experience, apprenticeships, mentoring and general business and operational experiences.

A recent example of Indigenous involvement in this sector occurred with the Gumatj clan of east Arnhem Land acquiring Yiwarr Seafood. The business includes a retail seafood operation and fishing licence, enabling them to service the local market. A processing shed is now being constructed; and the clan has purchased a boat and will employ local people to fish and fillet the catch before selling it to the community. It would be beneficial to watch this operation, and if successful, consider using it as a template for further activity in this sector.

6.4.3.4. recreational fishing

Approximately 30% of Non-Indigenous Territorians fish for recreation each year, with key motivators being to relax and enjoy the outdoors, be with friends and family, and to catch fish for fun, food or sport. No recreational licences are in place in the NT, but there are a number of controls on the gear that can be used and the type and numbers of fish that can be taken.

During the BMB1 Consultancy it became clear that significant Indigenous economic opportunities were possible through the development of small scale, low capital investment, controlled access to exclusive areas in Aboriginal land and adjacent waters for recreational fishing purposes. This experience could be expanded to include traditional hunting/fishing, cultural tours, painting, artefact sales etc.

The opportunity to expand and develop controlled areas for recreational fishers would address one of the recreational sector's strongest wishes – increased access. Indigenous

people could develop controlled areas by allowing access through their land to facilitate recreational fishing, utilising relatively inexpensive, simple setups, possibly including shelters, showers, toilet facilities, rubbish collection and boat launching. This option is not looking at fishing lodges and charter type setup (this is discussed in a later section of the report), but is focussing on maintaining a low key approach, similar to what the arrangements are on the Tiwi Islands.

Importantly, access could only be given to fishers if the TOs of the land, and those responsible for the fish agree and feel comfortable with allowing recreational fishers to use their land as a point to undertake recreational fishing. This approval would need to take into account impacts such an operation would have on their, and other people's, lives in the areas.

Such an approach allows Indigenous people a greater level of control, and with that the opportunity to ensure that the visitors are aware of any areas that the TOs do not wish them to fish in (sacred sites or their fishing 'food bowl'), or any other requirements they may feel are appropriate, such as modified fishing behaviour. Although the TOs may not have the legislative right to do this, they do have the powers to evict people who will not comply, or refuse access to those who do not want to comply. This is a fairly powerful tool for Indigenous people and provides them with the ability to control recreational activity (from the land) adjacent to their country. As outlined previously, success for Indigenous people, to some extent, would be acknowledged if they gained a greater level of management/control over sea country, and this approach does provide this.

Other community members, or possibly sea rangers, could be involved in this process if the particular TOs personally did not want to directly deal with the recreational fishers.

These recreational fishing access points could be developed at an individual clan or community level, or they could become part of a co-ordinated 'Indigenous recreational fishing trail'.

With or without the trail, to further develop this concept there would need to be assistance in a number of forms; which could include:

- identification and development of a model that could be 'franchised' to Indigenous people
- development of a culturally appropriate package to help prospective communities/clans to 'jump through' legislative and other administrative matters
- a level of support through Tourism NT, and/or an expansion of the Indigenous Tourism Experience in Arnhem Land program
- access to capital to develop infrastructure
- use of AFANT to help identify potential sites in consultation with TOs
- development and provision of culturally appropriate training for Indigenous people, to assist them to be able to operate the sites, understand the issues around

operating a tourist venture, comply with legislative requirements, and to meet recreational fishers expectations.

It is unclear what the cost would be to recreational fishers to take advantage of this opportunity. To go to Cobourg Peninsular costs \$200 per vehicle, for up to 7 days, plus \$10 per head. The Tiwi's fishing camps cost \$55 per visit. Demand pricing would determine what such an exclusive experience is worth to recreational fishers.

Along with TOs, the recreational sector would be major beneficiaries of such a program, through increased access. As such, the capital investment to build basic toilets, showers, camping facilities and boat launching options could possibly be funded by Government, thereby allowing more areas to be opened than if individual indigenous groups had to fund such works.

6.4.3.5. fishing tour operators (FTO)

To operate fishing charters, or to take paying customers fishing, requires a licence from the Fisheries Group. Licences are not limited entry and licence numbers have varied over time, peaking at over 230, but reducing to fewer than 150 in recent years, with about 50% of those active. Barramundi fishing and blue water fishing for reef and pelagic species are the most common business models in this sector, with catch and release fishing a key component. The clients of FTOs are recreational fishers and must comply with the same rules as other recreational fishers. Some FTOs impose their own rules to assist in reducing fishing pressure, such as suggesting clients take home a lesser number of fish than permitted under the possession limits, or only operating catch and release fishing trips.

As for recreational fishing access, the experience is of prime importance for this sector and as such the ability to fish in exclusive areas is an attractive proposition for FTOs and potential clients.

Indigenous people could seek to gain their own licences or make arrangements with existing FTOs to allow them access to Aboriginal land and waters to undertake fishing charters. There are a number of these arrangements already in place, which are linked to fishing lodges, camps or mother ships.

The potential for Indigenous guided fishing tours is great, as it provides an opportunity to combine a number of keen attractants for tourists; Indigenous culture, attractive and unique scenery and experiences, and of course fishing.

The capital investment is significant, with the need for well maintained boats, motors, fishing gear, insurance, licence fees etc, but it does allow a number of people in communities to be involved, on a full or part time basis, to share the work load.

The logistics involved in running fishing charters is intricate. Having to find and book clients, arrange pick up or travel arrangements for a number of clients, and matching their arrival

and departure to optimal fishing times or tides can be complex. There are also all the day to day business activities that have been identified previously, and includes completing daily catch and effort logbooks for the Fisheries Group.

Fees to undertake charter fishing can range from a few hundred dollars per day up to thousands, depending on the level of service, 'exclusivity' of the experience, fishing quality, fishing platform (dinghy to mother boat), or reputation of the fishing host (high profile fishing personalities such as Alex Julius and Andrew Ettingshausen – ET can often command higher prices).

Indigenous participation in this sector will require training to allow compliance with the sector's legislative and business requirements. This may include the need for drivers licences, maritime qualifications, first aid certificates, mechanical skills and hospitality training. The incorporation of traditional fishing practices and cultural aspects to the tour may well add value to the experience for clients, and could improve the marketability of Indigenous FTO operations. Many of those already involved in the marine rangers program would have a number, or all, of the necessary skills to be involved as FTOs, but it is unclear if they would want to relinquish their current roles.

FTOs need successful marketing and communication programs to succeed and attract clients and repeat business. Clear communication will be a necessary aspect of linking clients with guides to ensure there is no confusion as to times, permits required, prices and expectations. It is essential to ensure there are people in any FTO operation who are skilled in this aspect of the business, or there may be value in considering linking with some existing businesses that handle bookings and arrange logistics. Unhappy clients seriously affect business in what is a very competitive sector.

Indigenous people should seek to minimise the risk to their investment in this sector. High end operations require considerable capital investment and it may take a number of years to see a positive return, if it proves successful. Running costs will be high and cash flow may become an issue, especially during the off/low season. An ill considered, inappropriately sited or poorly managed fishing lodge or mother boat will almost certainly fail.

If there was a consideration of moving to the high end of the fishing charter spectrum, with the establishment of lodges, mother boats and the associated infrastructure, there is merit in seeking to develop partnerships, alliances, or joint ventures with existing, well established operators, or utilising their expertise as part of potentially developing any new venture.

6.4.3.6. resource management and compliance

The Indigenous marine and sea ranger program commenced in the early 1990s and there are now 15 groups covering the NT coastline. They are involved in a range of activities such as surveillance, monitoring, resource management and cultural activities. These groups are resourced through a range of different Territory and Federal funding sources and Land

Councils. The ranger program provides meaningful employment with a significant level of pride which can lead to the rangers being seen as role models in their communities.

Due to the remoteness of most of the areas that the rangers operate in, they are ideally placed to provide a role, on a 'fee for service' basis, to a range of government and non-government organisations. These include:

- assisting or undertaking search and rescue and enforcement of fisheries legislation for the NT Police Marine and Fisheries Enforcement Unit
- identifying possible illegal foreign vessels, illegal entrants and biosecurity breaches for Customs and Quarantine
- providing RD&E services for a wide range of Territory and Federal agencies, such as the Fisheries Group, Parks and Wildlife, Natural Resources, Environment, The Arts and Sport and Department of Agriculture, Fisheries and Forestry
- Involvement in ghost net clean-up and other environmental programs.

As a result of any redistribution of fishing effort that may arise from the BMB negotiation process, marine rangers are well placed to undertake compliance roles in remote areas.

There are future opportunities in the field of information transfer to commercial, recreational and Indigenous stakeholders based around fisheries management, compliance and business development issues.

Further opportunities could arise from Indigenous people taking on a greater role in the management of resources (fisheries or MPAs) through co-management roles, or as paid service providers for the NT or Commonwealth Governments.

Additional training will be required so that rangers' activities meet consistent standards, comply with legislative requirements, meet standards of evidence required to achieve convictions for illegal activities²², and for the collection, storing, recording and transporting of scientific material and data²³. This will require a co-ordinated approach to training and capacity building, especially with the potential for a broader range of activities to be undertaken in remote areas of the NT.

Currently the rangers undertake a range of duties for a price well below what it would cost agencies to conduct equivalent work. Ranger programs need to be properly valued so that appropriate costings can be determined and realistic fees applied to the work they undertake under any expanded role they may have in the future.

²² This process is already underway

²³ A small number of such project have commenced

6.4.3.7. Indigenous specific opportunities

Some matters to do with Indigenous specific fishing and seafood industry opportunities have been raised earlier (e.g. providing seafood to communities, revised management arrangements to provide greater flexibility to Indigenous businesses).

Part of the reason for decreased Indigenous commercial fishing activity relates to the changing management regime that has made licences expensive, placing additional pressures on Indigenous fishers to service loans and other conditions attached to the operations.

Although the concept behind the existing Aboriginal Coastal Licence has merit, it doesn't really provide a basis to develop a successful fishing business as key species are excluded, fishing gear is inadequate, individuals cannot obtain a licence, and marketing opportunities are limited. All in all, these factors make it almost impossible for the existing licence to be a real commercial venture.

The concept of these licences should be further investigated and developed, perhaps by allowing a limited harvest of managed species, the use of additional gear such as fixed fish traps and gill nets or the take of species outside existing fisheries, such as lobster, school prawns, oysters and other molluscs. For example, a small fixed fish trap on Melville Island in the 1970s produced between 10-30kg of fish per tide, so this method can be a rich source of protein and income for communities²⁴.

Any future development in this sector should be undertaken with a close eye on any sustainability or subsistence food issues that could arise. If Aboriginal Coastal Licences were to allow the take of managed species, or use currently non-permitted gear, then the capacity of the fisheries that take those species may need to be adjusted (i.e. buy out appropriate number of barramundi, mud crab, coastal line and Spanish mackerel licences or quota) to cover community take.

The use of fish traps and gill nets requires a level of expertise, and appropriate training on fishing methods, food safety and reporting procedures. Compliance with these measures should be a condition of being allowed to utilise these licences.

6.5. Business Model²⁵

Underlying the previous section is the need to develop appropriate commercial arrangements and a business environment that can accommodate Indigenous economic development opportunities. Some of the obstacles to establishing market-based fishing and seafood-related enterprises, particularly in remote communities, have been discussed

²⁴ Pers comm. Ken Baulch

²⁵ The options expressed in this section are only general concepts and should not be adopted until they have been assessed by appropriate legal and business experts.

earlier. Allocating commercial fishing rights to individuals or groups without the necessary support and advice is not likely to lead to successful development outcomes. The support services necessary are highly specialised, and may not currently exist in the NT.

There is a need to establish an organisation focused on both maximising the long-term benefits of any allocation of fishing rights, and tackling the obstacles to enterprise development in remote areas. Such an overarching body, referred to in this report as the Licence and Quota Owners (LQO) Organisation in Figure 2, should aim to be the perpetual repository of any Indigenous communally owned commercial fishing rights.

The NT delegates to NZ were provided with clear evidence that there are significant benefits, and a greater chance of success, if the political body is at arm's length from any commercial operations. Although cultural sustainability is a key driver for Māori business, and is an important aspect of their long-term vision, their business model clearly separates politics and commerce. A model proposed by the consultants in Figure 2 mirrors this clear separation of political and commercial activities. Critically, it also seeks to quarantine the ownership of licences, or quota, from any risk associated with commercial operations. To achieve this, commercial operations must be set up as stand-alone, subsidiary level, independent enterprises; referred to as Stand Alone Subsidiary Businesses (SASBs), that might receive some support from the LQO organisation, but are financially independent. A number of SASBs might be created to take up some, or all of the opportunities, that have been identified in this report, including:

- wild catch fishing
- aquaculture
- processing
- marketing
- logistics
- fishing tourism
- fishing charter
- licence/quota market
- RD&E provider
- training
- business development.

The consultants feel the LQO organisation would be best managed by a board that creates efficacy and legitimacy by incorporating both first-rate business expertise and detailed understanding of the needs and circumstances of Indigenous stakeholders (i.e. a mix of TOs and business experts).

Decisions about how to use cash surpluses will be crucial to the capacity of the LQO organisation to generate long-term benefits for stakeholders. Any benefit (profit or cash

surplus) accruing from SASBs should be allocated to uses that benefit relevant Indigenous people. Some of the uses might include:

- reinvestment in the fishing industry (purchase additional licence/quota)
- investment in allied industries (logistics, marketing, processing, charter or fishing tourism ventures)
- investment in diversified businesses
- provision of a social return to Indigenous people and communities (e.g. providing training, education scholarships, health or other services, or support for community projects).

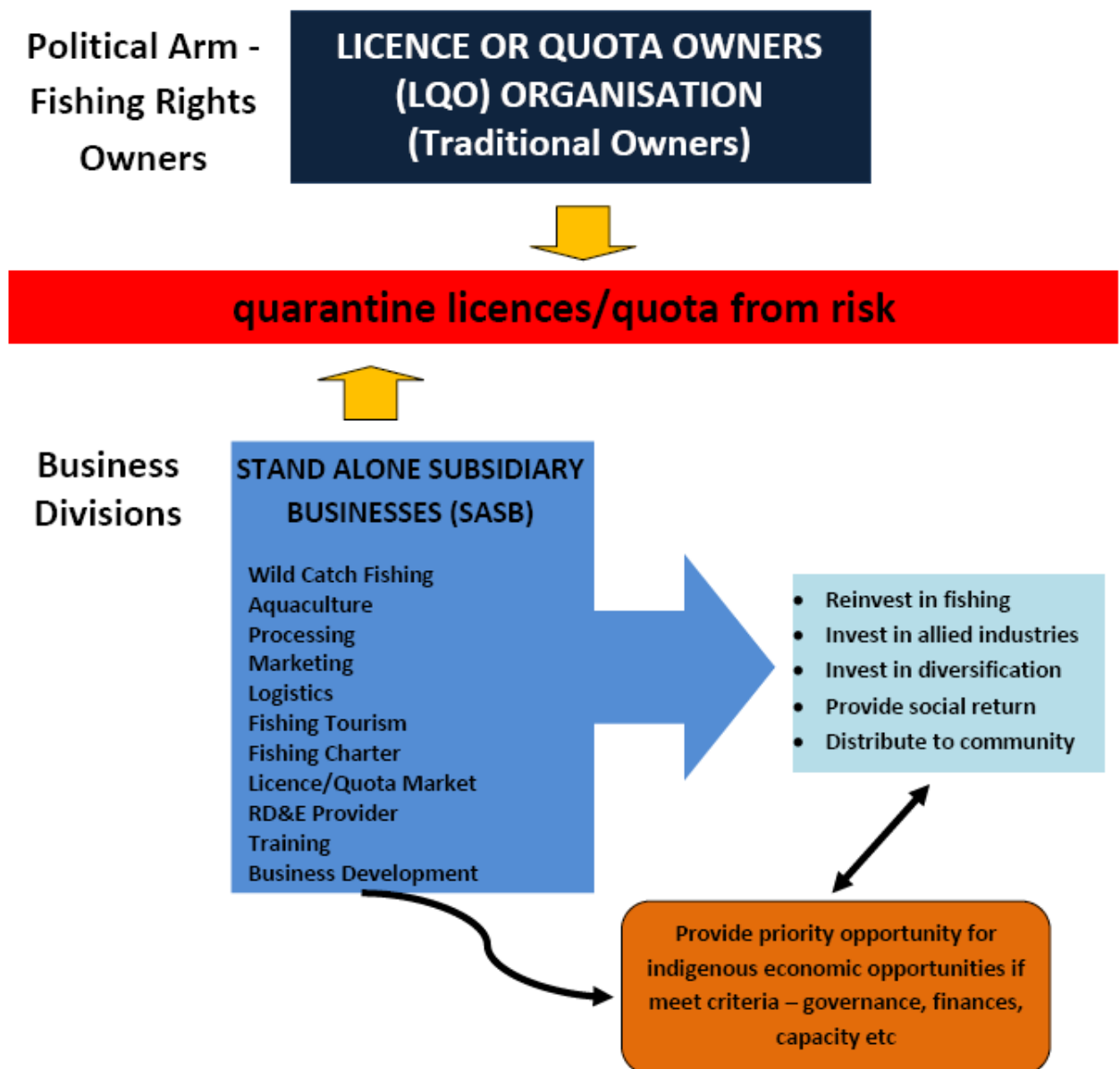


Figure 2: Possible Business Model for Indigenous Involvement in the Fishing and Seafood Industry in the NT

For taxation reasons, the LQO organisation probably needs to be established as a not-for-profit²⁶ body (company limited by guarantee or similar incorporation arrangement). This would disallow any direct distribution of benefits to shareholders, or directors (this is the basis of the Māori model). It is unclear if there is an existing incorporation model that adequately accommodates the proposed structure and further investigation is necessary in this area.

At least initially, returns from operations will not be great. If distributed amongst the large number of people who might have some claim, individual benefits would be insignificant. The gross return from all inshore fisheries is only around \$15 million/year (before expenses or capital investment) and the total lease value for all the mud crab and barramundi licences is less than \$3 million/year. By reinvesting returns over time, Indigenous Territorians could acquire major stakes in all NT fisheries, and/or become involved in a range of allied or diversified industries, potentially providing employment opportunities and other benefits for a large number of people.

While investment strategies would be determined by the LQO organisation's board, it is likely that reinvestment in more fishing rights would have many advantages. Owning a large proportion of fishing rights in a particular fishery can allow earnings per licence to be greatly increased through introduction of co-operative (as opposed to competitive) fishing arrangements, or by providing a competitive advantage in processing and marketing. Owning all of the rights in a fishery could allow elimination of costs associated with competitive fishing behaviour and would open the door to creating a much more efficient (i.e. profitable) fishery. There might also be opportunities to create social or cultural benefits, such as restrictions on fishing close to Indigenous living areas, the provision of bycatch to local communities, or work experience and/or training to community members.

A significant level of licence ownership should also allow greater input and influence in the fisheries management process. This could have advantages in a number of areas for the economic and social aspirations of Indigenous people.

Firstly, meaningful input into the management of aquatic resources is one of the key matters that has been raised by TOs and other Indigenous coastal residents. Ownership of a significant licence portfolio can provide both direct influence over a number of fishing operations and fisheries, and ensure a stronger voice with fishery managers.

Secondly, the fisheries management tool of choice for the NT has largely been through input controls. Input controls are designed to limit catches by imposing inefficiencies in the harvesting sector to attempt to limit harvest levels to a sustainable fishing level. Switching to management arrangements based on output controls (e.g. individual catch quotas) could lead to greater efficiency and higher profits in some fisheries. On the other hand there may

²⁶ A 'not for profit' organisation can generate a cash surplus, but must not distribute any benefit to the individual members of the organisation. Earnings must be put towards the organisation's stated goals.

be social or community drivers to seek greater flexibility in fishing operations in order to maximise employment in communities, possibly to the detriment of economic efficiency.

The LQO organisation should have a role to support Indigenous individuals, or groups, wanting to establish commercial fishing or related enterprises. Criteria concerning capacity and access to resources should be established for qualification for this type of assistance. Assistance might include:

- priority, or subsidised, access to a commercial licence/quota leases
- assistance with training and capacity building
- assistance with planning and obtaining financial support
- assistance and advice with all operational aspects of the enterprise.

This sort of support could be provided by a SASB established as a development and support agency. Like all other SASBs it would need to stand alone financially, perhaps attract base funding from the LQO organisation with specific project funding from relevant agencies on a case by case basis.

It should be remembered that successful economic development does not necessarily mean having people in communities fishing - good business is about being successful in the operation and achieving the desired goals (i.e. economic opportunities, employment, having a greater say in management). There is little to be gained from having a large number of people fishing if they are not the right people, or aren't committed to the industry.

6.6. Capacity Audit and Needs Analysis

The project required the consultants to undertake a human capacity audit and needs analysis for Indigenous involvement in the commercial fishing and seafood sectors. This analysis is based solely on the experience and opinions of the consultants and has not involved any specific face to face interviews. The following information should therefore only be used as a guide. There would be merit in undertaking a more through capacity audit prior to any action. In addition, any analysis is undertaken at the broadest level, and as such there is acknowledgment that some individual's or group's capacities may have been overlooked.

A summary of the audit is shown in Table 3. Capacity levels in most categories were rated as low, except for those around traditional activities and skills that have been developed through the ranger programs. Most categories around contemporary management, wild harvest fishing, marketing-processing, business training, aquaculture skills and fishing tourism rated low. However, due to the broad approach taken it misses the pockets, or groups, who are highly capable and are often linked to the ranger programs or with links to previous fishing and seafood operations.

The analysis confirmed the consultants' view that a 'one-size-fits all' capacity building approach will not be effective in addressing the lack of economic activity in remote Indigenous communities. Hands-on, on-country approaches, tailored to particular circumstances are most likely to achieve success. There must also be pathways to real jobs and careers; otherwise mistakes of the past may be repeated.

The nature of capacity building will, to a large extent, depend on the business arrangements that Indigenous people decide on as part of their increasing involvement in the fishing and seafood sectors. Regardless of that decision, in the longer term there will still need to be capacity building in the fishing operations, resource management and business management fields. Developing a range of core skills that can be transferred across commercial, recreational and ranger programs would seem logical.

Table 3: Capacity 'audit' and needs analysis for Indigenous commercial fisheries involvement.

Need	Capacity			Comments
	Low	Med	High	
Understanding of traditional fishing methods				
Understanding of traditional management arrangements				
Understanding of contemporary management arrangements				
Understanding of alternate management arrangements				
Capacity to find relevant information				
Ability to transfer information and concepts across sectors				Cross cultural
Training or experience in consultation and engagement				Cross cultural
Knowledge of commercial species				Mainly coastal
Experience working in wild harvest fisheries				Small number
Training or experience in use of range of commercial fishing gear				Limited gear
Product knowledge				
Experience in marketing				
Experience in processing and logistics				
Training or experience in food safety				
Training or experience in work health				
Understanding the supply chain				
Governance training				
Understanding economic based business models				
Training or experience in business management				
Training or experience in business management - seafood				
Training or experience in complying with business taxation				
Training or experience in managing cash flow				
Training or experience in bookkeeping				

Need	Capacity			Comments
	Low	Med	High	
Aquaculture technical skills				Kulaluk/Tiwi
Practical aquaculture skills				Kulaluk/Tiwi
Training or experience in aquaculture stock management				
Knowledge of recreational species				Mainly coastal
Training or experience in hospitality				
Training or experience in recreational fishing operations				
Training or experience in fishing charter operations				
Training or experience in managing a tourist operation				
Training or boating skills experience				
Mechanical competencies				
Coxswains				Some rangers
Master IV or above				
Refrigeration repair qualifications or experience				
Training or experience in using electronic and other aids				Some rangers
Training or experience in biosecurity				Some rangers
Experience in undertaking compliance roles				Some rangers
Training in undertaking compliance				Some rangers
Complying with fisheries legislative requirements				
Training or experience in undertaking R&D				Some rangers
Training or experience as trainers				

7. CO MANAGEMENT

The NTG requested that the consultants assess the feasibility of developing Indigenous co-management projects, relating to the management of fisheries resources, at a community/regional level.

The reason co-management is being considered at this time is that it is felt by many that there is a need for a 'cultural change away from an untrusting, often conflicted 'them versus us' approach to one of partnership based on joint responsibility for decision-making and implementation in fisheries management'. The Fisheries Research and Development Corporation's (FRDC) national working group on the fisheries co-management initiative sought to reflect this and developed the following definition of fisheries co-management; that is;

'Fisheries co-management is an arrangement in which responsibilities and obligations for sustainable fisheries management are negotiated, shared and delegated between government, fishers, and other interest groups and stakeholders'.

This co-management model seeks to move from command and control to delegation over time (a shift from centralised to a delegated model). Co-management can offer a range of benefits to stakeholders and Government. The development of a partnership approach based on shared responsibilities for implementing sustainable management can provide the following benefits:

- greater transparency
- potential for regional delivery of services and functions
- more flexible and adaptive management processes
- reduced necessity for political decision-making
- greater scrutiny of regulatory controls
- opportunity for empowerment
- building capacity and skills of people involved in managing the fishery
- greater ability to innovate and respond to needs.

Table 4, which is taken from the FRDC report on co-management, clearly highlights that the majority of roles and functions with respect to management of fisheries resources are ideally suited to co-management arrangements between the NTG and Indigenous people, especially at a community level. Of the 50 functions outlined, around 50% of them could be undertaken by TOs and 30% jointly between TOs and the NTG under a co-management partnership.

Although co-management models have been around for many years, and are often used to manage parks, the concept is a relatively new tool in the contemporary fisheries managers' kit. For that reason there would be real merit in developing a small number of test cases to see if there is the commitment and desire from both sides to move to a more delegated management model for Indigenous fishing at a community level.

Although based on the capacity analysis many Indigenous groups may have a low ranking in many aspects, those relating to traditional and customary use, fishing and management were rated high. A key concept of co-management is to develop a management regime in partnership so as to empower, transfer knowledge and build capacity over time. There is no doubt the Indigenous partners will require assistance in many aspects of this project, but they believe they already have responsibility for management, and just need a process, such as this, to allow the NTG to understand this.

For these projects to have the best chance of success there will need to be a number of conditions, including:

- it must be undertaken in a culturally appropriate manner (e.g. timing, processes, language)
- it must be seeking a real outcome with the aim of genuine devolution of management – people need to see real outcomes

- the need for the process to be adequately resourced
- allowing enough time for the project to develop and work through issues.

There could be considerable merit in further investigating co-management programs for a range of projects, including management of customary fishing, reviewing the existing Aboriginal Coastal Licence, and building information transfer packages through the ranger program.

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Table 4: Functions under a co-management model – possible roles and responsibilities for management of customary fishing

ADMINISTRATION		RESEARCH AND DEVELOPMENT Cont.	
Initial granting of fishing rights	NTG	Research activities; delivery	TOs
Issue, renewal and transfer of authorities	JOINT	Assisting researchers	TOs
Database of operators	JOINT	Provision of information, data	TOs
Committee support	JOINT	Report writing	JOINT
Logbook collection, data input	JOINT	Extension of information	TOs
Setting legislative fees	NA	Research logbooks	JOINT
Service fee collection	NA	MONITORING AND ASSESSMENT	
Auditing financial and administrative performance	NTG	Stock assessment	JOINT
Annual and other reports	JOINT	Ecosystem assessment	JOINT
Budget compilation, tracking and reporting	JOINT	Stock assessment audit	TOs
Policy making	JOINT	Data collection and analysis	JOINT
COMPLIANCE		Catch and effort log books	TOs
Risk analysis	JOINT	Threatened, endangered or protected species reporting	TOs
Surveillance and monitoring	TOs	Observer program	TOs
Enforcement, intelligence, analysis	JOINT	MANAGEMENT PLANNING	
Information gathering	TOs	Sustainability performance limits	TOs
Prosecution of breaches	NTG	Defining harvest strategies	TOs
Legislative changes	JOINT	Legislation drafting, regulation changes	JOINT
Administrative penalties	NTG	Codes of practice	TOs
RESEARCH AND DEVELOPMENT		Environmental management systems	TOs
Establishing ecosystem benchmarks	JOINT	Community / access / interactions	TOs
Fishing related ESD research projects	JOINT	Community / access issues and responses	TOs
Non-fishery related ESD research projects	TOs	COMMUNICATION AND EXTENSION	
Industry development	JOINT	ESD framework	TOs
Write or commission project proposal	JOINT	Communication among fishers	TOs
Project management	TOs	Community education and awareness	TOs

TOs – traditional owners, JOINT – TOs/NTG, NA -- Not Applicable

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9. APPENDICES

Appendix 1. Case Studies

The New Zealand Experience

Introduction

The NZ example is a very important case study as Māori have established an important role in NZ's fisheries due to their multiple interests as commercial players, customary users, and recreational fishers. They also maintain strong rights guaranteed under the Treaty of Waitangi (the Treaty).

This case study investigates consultative, managerial and economic matters in NZ, focusing on the interactions between Government and Māori, and Māori responses and actions arising from the 'Settlement' processes.

In addition to the documentation listed in the bibliography, the consultant's experiences when leading a multi-sector NT delegation to NZ in 2008, and the meetings and discussion undertaken on that trip, plus subsequent meetings, have provided extensive input to this case study. The assumptions used in the case study are broad, unless otherwise identified.

New Zealand - Background

There are no provinces, states or territories in NZ with local government administering regions in a two tier approach with the national Government.

Whilst the fishing industry is in decline in many parts of the world, in NZ it is still maintaining its importance in terms of export income and employment. Thousands of people are employed ashore, at sea and indirectly. Many of these jobs are located in smaller provincial centres.

NZ Fishing and seafood production has an estimated annual value of \$1.75 billion. Wild harvest fisheries are generally managed under quota and focus on deepwater species, but a number of high value quota managed inshore species. Recreational fishing is an important pastime in NZ with the majority of activity focussed on inshore species. Māori rights are well recognised with Māori forming the largest users of the resource, being significant stakeholders in all sectors.

Each sector, recreational, commercial and customary, is allocated a share of an annually determined Total Allowable Catch (TAC). Each commercial licensee has a specific share or percentage of the annual TAC, whilst the customary and recreational share is by way of a general allowance for each sector, not a specific entitlement.

The Treaty guaranteed that Māori would maintain the right to keep their lands, forests, fisheries and all their treasures, with sovereignty (the English version) and governorship (the Māori version) passed to the Government. The Treaty recognised that Māori held property in sea fisheries and that the Government was required to protect those rights. The *Treaty of Waitangi Act 1975* provided for the establishment of the Waitangi Tribunal (Tribunal), to make recommendations on claims relating to the application of the Treaty, including fishery matters.

Development of the NZ Fishing Industry and Māori Involvement

In 1986 the Government moved to a Quota Management System (QMS) to manage fish stocks and create a process for allocation of Individual Transferable Quota (ITQ) to commercial fishers who met relevant criteria. There were a number of issues in relation to the initial allocations (e.g. allocation of set quota weight - v - % of TAC, no specific allocation for non commercial sectors, and overallocation issues) but these have, or are to a large extent, being addressed. The QMS effectively privatised rights to commercially harvest fish. The Tribunal found that the QMS impinged directly on Māori

rights under the Treaty, as the Government had wrongly given non-Māori rights which were guaranteed to Māori.

In 1987, Māori gained an interim declaration from the Court of Appeal, preventing the extension of the QMS to further fisheries. The High Court agreed that the QMS did not take into consideration pre-existing Māori fishing rights. The decision was influenced by the Tribunal's review that found customary fishing rights had a commercial element. Following this decision, NZ recognised 'customary commercial rights'.

The Government and Māori then entered into a negotiation process with the goal of resolving claims outside the court system. After extensive national consultation by Māori negotiators with iwi and hapu²⁷ a 'Deed of Settlement' (Deed) was agreed to and this led to a two part settlement (Settlement). Support for the Deed and Settlement, although widespread, was not universal.

The first Settlement in 1989 saw the transfer of 10% of NZ's commercial fishing quota (approximately 60,000t), shareholdings in fishing companies (including full ownership of Moana Pacific Ltd—NZ's largest inshore fishing business), and \$50 million in cash, to the Treaty of Waitangi Fisheries Commission (TWFC), to be allocated to iwi. The second Settlement (referred to as the Sealord Deal) followed in 1992 which saw an additional 10% of quota, through the acquisition of 50% of Sealord Fisheries (NZ's largest fishing company), shares in other fishing companies, \$18 million in cash, and 20% of all new species brought in under the quota system being transferred to the TWFC, in trust for iwi.

The Government also agreed that it would, in consultation with Māori, "cause" Māori to participate in Fisheries Statutory Bodies. The Deed also provided for legislation which would recognise the relationship between Māori, customary food gathering and places of food gathering importance.

Māori agreed that as a result of the Settlements all current and future claims with respect to commercial fishing rights were fully satisfied and discharged, and that all legal proceedings relating to those claims being discontinued.

Subsequently, the *Māori Commercial Aquaculture Claims Settlement Act 2004* was implemented to settle Māori claims with respect to aquaculture. The principles of the Act provide iwi with the equivalent of 20% of the water-space rights created in coastal waters, on a regional basis.

Overall, the Settlements provided half a billion dollars in assets to the Māori, giving them close to 40% of the NZ commercial fishery, with the potential to acquire a significantly greater proportion from the resource with the funds provided by the Settlement. The estimated value of the Settlement assets in 2005 was \$750 - \$800 million.

The TWFC was structured to make it accountable to Māori. Its primary task was to hold settlement assets on behalf of iwi and develop an allocation method. This resulted in a model that determined allocations to iwi based on the length of their coastline and the size of their population compared to the total Māori population.

From 1993 to 2003, the TWFC undertook substantial consultation and negotiation with government, lobby groups, and Māori. The culmination of nearly two decades of conflict, negotiation and litigation ultimately led to the passage of the *Māori Fisheries Act 2004*. Having completed its primary task, the TWFC was dissolved, with its successor being Te Ohu Kaimoana (Te Ohu), the trust responsible for advancing the interests of iwi in the development of fisheries, fishing and fisheries-related activities. Te Ohu's primary role is to administer, allocate and transfer settlement assets to mandated iwi. Its operating structure is shown in the following figure. Only mandated iwi can

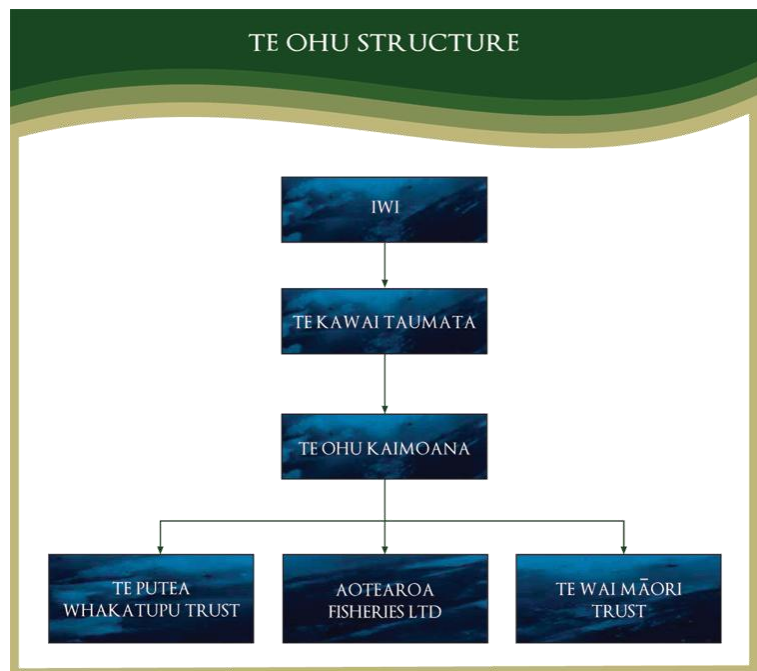
²⁷ Hapu - a subtribe made up of a family or a number of family groups

receive their allocation of assets from Te Ohu. Mandating is a formal process which ensures that each iwi has adequate systems in place (governance arrangements, constitutions, structures and register of members) and agreements between iwi. Further details can be found at http://teohu.Māori.nz/iwi/mandate_process/flowchartFLASH.swf. Approximately 75% of settlement assets have been transferred to iwi.

Discussions with mandated iwi in NZ during the 2008 stakeholder delegation highlighted the need to have clear separation of the political side (Iwi/Trust/Political Organisation) from the business side of any operation. Fisheries businesses set up in this way are likely to be up to 250% more effective.

The Current Fishing Industry and Māori Involvement, Including Management

Under the Settlement, each iwi receives a minimum asset package of \$1 million through a mix of; quota; income shares in Aotearoa Fisheries Limited (AFL) and cash. There are 57 iwi recognised in the Māori Fisheries Act. After iwi receive their initial settlement assets, Te Ohu continue to administer new quota brought in to the QMS and supervise quota sales. In addition to this, Te Ohu plays a vital advocacy role on behalf of Māori by providing a central voice when legal reforms are proposed that relate to either the seafood sector, or ownership/management of marine and freshwater environments. Te Ohu provides critical advice to the Ministry of Fisheries and the Fisheries Minister on any impact that fisheries management decisions may have on either the commercial or customary rights of Māori.



The link between iwi and Te Ohu is through Te Kawai Taumata, whose sole function is to appoint the directors of Te Ohu. Te Kawai Taumata acts as the Māori Fisheries Electoral College consisting of at least 6, but no more than 11, members. Ten of the members are appointed by iwi across the country voting in their group to appoint one member each, and the remaining member is appointed by the Representative Māori Organisations Group. Each group may determine a process that is best suited to their circumstances, which enables them as a collective to appoint their member.

Te Ohu oversees Te Putea Whakatupu Trust (TPWT), Te Wai Māori Trust's (TWMT) and Aotearoa Fisheries Limited (AFL).

The primary focus of TPWT is education, training and fishing and fisheries-related research activities. It is governed by three directors appointed by Te Ohu. TPWT received \$20 million initially from Te Ohu and continues to receive \$1 million annually.

TWMT's purpose is to advance Māori interests in freshwater fisheries and is governed by three directors appointed by Te Ohu. TPWT will receive received \$20 million from Te Ohu.

AFL is a major player in the fishing industry and was established to maximise the value of Māori fisheries assets for the benefit of its iwi and Māori shareholders. The company was established under the Māori Fisheries Act 2004 and holds around half the total value of the Māori fisheries

assets. Te Ohu is the sole voting shareholder in AFL and appoints the board of directors. All mandated iwi organisations hold income shares and receive annual dividends from the company.

Te Ohu and the Seafood Industry Training Organisation (SITO), have a key partnership agreement in which the organisations combine their resources to maximise Māori capability to enter into the business of fishing. This is achieved in a number of ways including;

- involvement of a Māori Caucus, as part of the governance and operational process
- dedicated resources to work with Māori across the industry and to build networks with iwi and fisheries asset companies
- programs targeted specifically at Māori, including iwi capacity building for the management of fisheries assets, leadership enhancement for Māori, and customary fisheries management
- structured seafood qualifications that include Māori content, with the capacity for delivery and assessment, in language, and recognition of prior learnings (RPL)
- a commitment to delivering programs at iwi, or as appropriate for Māori.

Findings

Of significance, as part of the settlement process after the High Court's ruling, the Government and Māori entered into a negotiation process with the goal of resolving claims outside the court system.

During the last ten years NZ's resource management framework has been overhauled, with significant implications for Māori. This includes provisions that all future legislation should consider any implications for the Treaty, and the requirement for the Government to consult with Māori. In addition, provisions were made to broaden the scope of the debate over Māori fishing interests to encompass a wide range of resource management matters. Recently, concepts such as *tino rangatiratanga* (Māori self determination) are being incorporated into settlements and management.

There continues to be some criticism of the consultation and negotiation process as some Māori believe negotiators agreed to the Deed in secret, and with little consultation with iwi. Although commercial rights were settled through the purchase of equity in commercial fishing enterprises, there is concern that the compromises reached provided far less than the complete ownership some were aspiring to.

Whatever issues may have arisen through the process and still continue today, the Settlement and ongoing developments now see Māori with an important role to play in the overall management and use of NZ's fisheries resources. Through careful investments and business management, Māori control over 40% cent of the NZ fishing and seafood industry, including processing, wholesale, retail and aquaculture operations, 100% of the customary take and a significant ($\geq 50\%$?) amount of the recreational take.

A major challenge for Māori has been the sharing of Settlement benefits among various iwi. This has generated some tension, as well as court action over resource distribution and property rights at the iwi level; a tension which is centered on Treaty rights versus iwi sovereignty. Many iwi argue that fishing quota is an iwi based right and not one for collective Māori ownership or distribution.

Consultation with Māori groups extends to decision-making about a range of matters, and their views are sought in many areas of social policy, including fishery related matters. The increased focus on recognising the need for a Māori point of view means that there are many collective decisions to be made. As never before, Māori groups are now being called upon to respond in a representative fashion to all kinds of issues in many different contexts and this is an issue.

There are difficulties at all levels of Māori society in agreeing upon a person or entity to represent the point of view of the collective. There are a number of issues; what point of view needs to be expressed, on whose behalf the view is offered, and how and by whom it should be delivered. The more important the topic upon which the view is expressed, the more stressors are placed on the group to get it right, and to obtain community support for the final decisions made (austlii.law.uts.edu.au/nz/journals/VUWLRev/2002/25.html). In negotiating settlements, communities are required to reach a position where they are able to sign "full and final" settlement agreements with the Government, but in doing so they are aware that it is binding not only itself, but also generations to come, and this can at times be the most important factor in the decision-making process. In many instances Māori Liaison Officers have been employed to coordinate the activities of those who seek a Māori response.

The Government appears eager to work in partnership with Māori to provide for the utilisation of fisheries resources whilst ensuring sustainability. Māori are now managing customary fishing within their own country, actively participating in commercial fishing, and are involved in wider fisheries management, with traditional management practices recognised in the contemporary management of fisheries. This has been achieved by the creation of regional groupings or forums made up of Māori fisheries representatives, the appointment of kaitiaki (guardian or stewards), Māori obtaining meaningful input into fisheries management plans and developing policies on how traditional knowledge and fishing practices can be incorporated into contemporary management regimes. These measures are aimed at recognising and empowering the role of Māori in the decision-making process.

A number of Māori still believe there are a number of barriers to achieving their aspirations. These focus on;

- Government management and regulatory interests not being fully aligned with Māori aspirations
- a perception that Māori views are not adequately valued
- a lack of clarity as to where, when, how and who is to consult with whom on what
- a lack of resources and in some instances, capacity, for Māori to contribute meaningfully to consultation
- a view that resources should be managed in a sustainable way, so that absolute restrictions are not required; i.e. sustainable development versus protection
- the ability to fully benefit from economic development
- there only being limited application of traditional management tools/methods.

A successful and positive partnership approach through Te Ohu and the SITO, appears to have the capacity to develop and deliver culturally appropriate and industry specific training designed to improve Māori capacity to operate in the industry across all sectors, and all aspects of the industry.

Conclusion and Key Lessons

From an outsider's perspective the NZ model appears to have successfully increased Māori commercial participation along the supply chain, improving management contribution and input, recognising cultural needs, and incorporating traditional management tools.

After the initial legal challenge to the QMS and subsequent High Court ruling, the outcomes have generally been achieved through a negotiated process, with a view to resolving matters outside the court system. This process may have provided outcomes that didn't achieve all Māori aspirations in relation to resource ownership and control, but it did provide quantifiable rights in the form of quota allocation, along with funds to allow ongoing growth and development of those assets, and the development of a strong financial basis for all Māori.

The creation of the TWFC (and then Te Ohu) and the formal mandating process with its requirement for sound governance, appears to have provided a means for the orderly distribution of settlement assets. Opinion in NZ is that if iwi use a model that separates the political arm from the business arm(s) of their operation, it is likely to be significantly more effective.

A further outcome of the Settlement was formal recognition by the Government of the need to consult with, and take on board the view of Māori in respect to fisheries issues. It has been difficult, at all levels of Māori society, to agree upon a person or entity who will represent the collective point of view. This has led to a number of issues for some Māori, especially in relation to determining who should, or can provide a representative view of the Māori collective, or if such a process can, or should, be undertaken from a Māori perspective? The need to fully resource this process is a key issue if optimal involvement is a major aim.

This issue has partially been addressed by the creation of regional groupings or forums made up of Māori fisheries representatives, plus the development of self managed Mātaitai reserves using Taiāpure (local management tools). However, the use of, and incorporation of traditional knowledge and fishing practices into contemporary management regimes is still proving problematic outside of customary use.

The use of the Māori Fisheries Electoral College to elect directors for Te Ohu is a process that allows the identification of a key group of Māori. The fact that each iwi can determine their own process for electing members allows flexibility in collective decision making.

The ongoing issue amongst iwi, relating to Treaty rights versus sovereignty, shows there hasn't been 100% acceptance of the process, and it is unlikely that this issue will be resolved in the near future, or ever in fact, under current law.

The High Court ruling recognising 'customary commercial rights' was a significant outcome, as it shifted Māori involvement from a purely ceremonial/subsistence right to recognition that customary rights were more, including commercial use.

The partnership approach developed between Te Ohu and the SITO, for the development, capacity and delivery of culturally appropriate and industry specific training designed to improve Māori capacity to operate in the industry across all sectors has been positive and successful.

The Canadian Experience

Introduction

For many Canadian First Nation (FN) people, fish is the most culturally vital item. It is reflected in their traditions, histories, and ceremonies with important physical, social, spiritual, and economic sustenance roles. Canadian FN people have an important role in Canadian fisheries, as they have multiple interests.

This case study investigates consultative, managerial and economic matters in Canada, with a focus on the province of British Columbia (BC). It looks at the interactions between Government and Canadian (FN) people. The information in this case study was sourced from the documentation listed in the Bibliography. The assumptions used in the case study are broad, unless otherwise identified.

Canada - Background

Canada has a population of 33.5 million of which more than one million now identify themselves as Aboriginal. The country has three levels of government; Federal, responsible for issues that affect the whole country, Provincial/Territorial, responsible for issues such as education, healthcare and roads, and Municipal/Local, responsible for city streets and other local matters.

Canadian fish stocks have been under pressure in recent years, especially salmon and some of the groundfish fisheries. However it is still a significant industry, with landings of around 1.1 million tonnes, and valued at \$1.8 billion. There are over 22,000 vessels employing 82,000 fishers, plus many more on shore involved in processing and logistics.

Development of the Canadian Fishing Industry and First Nation Involvement

For thousands of years Canadian FN people sustained vibrant and rich cultural identities linked to land and water. Salmon provided protein, generated wealth as a trade item, and was linked to culture. The importance of salmon to the Canadian FN people was critical because if a salmon run failed, communities faced starvation. The importance of salmon to FN people was highlighted by the fact that their settlements were built around the salmon fisheries.

Fishing has been regulated by long-standing cultural laws around conservation and preservation for future generations. Rather than exclusive possession, traditional FN concepts of ownership are better understood in terms of stewardship. This 'ownership' denoted priority to the resource but not generally the right of exclusion. Under this scenario, FN leaders allocated fishing sites and the time and order in which tribe members could fish.

At the time of European contact, Canada was inhabited by distinct groups of FN people and trading for salmon took place between FN groups and settlers.

In the 1870s, commercial fishing licences to fish the salmon runs in BC were granted to non-Indigenous people and this led to the establishment of the first commercial canneries. As pressure on stocks increased, the Federal authority increasingly limited FN people access to fisheries. Food fishing permits were granted to those FN people who were unable to work in the wage economy. In many places the fisheries were closed to FN people, but left open to both commercial and sport fishing.

Over time the importance and priority of traditional fisheries became recognised by some non-Indigenous people. In 1972 a Federal territorial task force fisheries report recommended that the 'harvesting of fish for domestic purposes should take precedence over commercial or sports development'. In 1982 the *Constitution Act* recognised 'existing Aboriginal and treaty rights of Aboriginal people'.

In the mid 1980s dissatisfaction with fisheries management and sustainability issues focused Indigenous people on new models of fisheries management. The notion of co-operative and shared approaches to decision-making was emphasised, as was support for negotiated management regimes.

In a landmark 1990 Supreme Court decision, 'R. v. Sparrow' the Court held that, after conservation and other 'valid legislative objectives', Aboriginal rights to fish for food, social and ceremonial (FSC) purposes have priority over all other uses of the fishery. The court also held that infringements of Aboriginal rights must be justified and that part of the justification analysis would involve an assessment of whether adequate consultation had occurred. While the Sparrow case prioritised customary fishing rights, the status of FN commercial fishers had yet to be decided. FN people believe that the courts did not create the Aboriginal right to fish; they simply recognised that it was never extinguished and continues to exist.

In 1991, as an interim response to the Sparrow decision, the Department of Fisheries (DFO) created the 'Aboriginal Co-operative Management Program' to test possible approaches to FN fisheries issues for a one year trial. The response was successful and FN people became involved in the design and implementation of fisheries management, habitat restoration, fish enhancement and catch monitoring activities.

This involvement resulted in DFO launching the 'Aboriginal Fisheries Strategy' (AFS) in 1992. The AFS sought to enhance Aboriginal participation in fisheries. In its first year, \$15 million was spent in BC, with nearly 75% of Aboriginal people in the province (who traditionally depended on the salmon fishery) reaching agreement on resource management projects. Annual funding for the AFS was \$35 million, with about 125 agreements signed annually. Approximately two-thirds of these agreements were reached with Aboriginal groups in the Pacific Region, with the remainder being in Atlantic Canada and Quebec. The AFS created approximately 1,300 seasonal jobs in areas such as processing, monitoring and enhancement activities.

The AFS also led to the development of the 'Allocation Transfer Program' (ATP) in 1994. The program had a budget of approximately \$6 million annually. In keeping with DFO's overall objective of resource conservation, the ATP facilitated the voluntary retirement of commercial licences and the re-issuance of the equivalent commercial fishing capacity as communal commercial licences to eligible Aboriginal groups. This program therefore didn't add to existing fishing effort.

There are a number of criteria FN groups had to meet to be eligible for the ATP, such as having an existing comprehensive AFS fisheries agreement, as well as satisfactory compliance and management practices. In addition, FN groups had to prepare business plans outlining the financial benefits plus employment and skill-development targets. Funding priority was given to groups who contributed to long-term Aboriginal employment and community economic development, as well as increasing Aboriginal participation in fisheries. Aboriginal groups who benefited from the program had to re-invest a portion of the profits for fisheries management and development. Approximately 900 commercial licences were issued to FN groups under the ATP.

In 1996, the Supreme Court brought down three decisions collectively known as the 'Van Der Peet trilogy', which addressed whether Aboriginal fishing rights included the right to sell fish for commercial purposes. In the three cases, the Federal Government charged FN people for catching fish for sale without a commercial license. The rule emerging was that, in order for a constitutional right to fish for commercial purposes to exist, an Aboriginal group needed to demonstrate that a defining and central feature of their society prior to European contact was trade in fish (the Court considered the Mabo case in its deliberation). This decision meant that FN rights arose prior to European contact and not from interaction with settler society, and therefore had to be a practice

integral to the culture of the group. Asserting the right, and the standard for proving this, was higher than if the group was claiming a right to fish for FSC purposes.

In the 1999 the Supreme Court's 'Marshall Decision', established a communal right for FN people to earn a 'moderate livelihood' from commercial fishing. This led to increased DFO-FN collaboration, aimed at integrating FN commercial fishing participation into established fisheries. The resulting 'Marshall Response Initiative' (MRI), which ran from 2004 to 2008, involved transferring licences/quotas and fishing vessel/gear to participating FN communities, plus providing additional support for commercial fisheries capacity building within these communities. In addition to the MRI, the 'At-Sea Mentoring Initiative' (ASMI) assisted FN fishers to develop safe and effective fishing skills, build capacity for providing their own fisheries training, and the delivery of at-sea mentoring for new FN crew members. The 'Fisheries Operations Management Initiative' (FOMI) ran in conjunction with this program, which helped FN fishers better manage fishery operations.

The Modern Treaties Process

An important aspect of the Canadian experience is that the courts have repeatedly encouraged Governments and FN people to resolve issues related to Aboriginal rights by negotiation rather than litigation.

BC is unique among Canadian jurisdictions in that it has very few historical treaties and therefore provides a good example of the modern treaty process in Canada. Since 1992 the Federal and BC governments have engaged FN in extensive treaty negotiations through a formalised process. Economic analyses, undertaken in 1990 by Price Waterhouse, calculated the cost to BC of not settling treaties to be \$1 billion in lost investment and 1,500 jobs in the mining and forestry sectors alone.

Modern treaties are negotiated with the belief that by clearly defining Aboriginal rights, they will improve economic certainty over Crown land and resources, and so advance the lives of FN people. The reality is though, that parties usually disagree on fundamentals, such as compensation for past actions, governance, ongoing financial arrangements and fisheries access and input, thereby holding up the process for years.

In 2004, 45 negotiations were underway, but only five of these had reached final negotiation stages, demonstrating the complexity and slowness of the process. To highlight this delay, the first modern treaty concluded in BC was the Nisga'a Treaty, negotiated through the 1970s to its conclusion in 2000 – almost a 30 year process! To help address this to some extent, as an interim measure, where a treaty has not been finalised, some FN groups will enter into 'Agreements-In-Principle' (AIPs) with governments. AIPs have provisions similar to those in Treaties, but each one varies according to the circumstances, and will generally be viewed as the penultimate stage before the signing of a treaty. These agreements do not receive the same constitutional protection as the treaties and are regarded as temporary measures.

Current treaty negotiations strive to find a balance between providing FN groups with a greater role in the management and commercial use of fish, while protecting the interests of non-Aboriginal fishers, so that FN and non-Aboriginal fishers co-exist. Establishing access to the commercial fishery as part of treaty negotiations is about recognising that fish are not only an integral part of FN culture, but also a critical part of restoring economic self-sufficiency.

The Current Fishing Industry and First Nation Involvement, Including Management

In many areas, FN people are underrepresented in commercial fisheries, yet the commercial fishing industry is often the greatest economic opportunity for remote coastal communities.

In 2003 there were about 600 FN operated commercial vessels in BC, of which about 95% were owned by FN groups, with the balance owned by others, but operated for FN interests. FN members held about 30% of the 7,500 commercial licenses, landing \$52 million worth of fish, approximately 14% of the total landed value. This included about 40% of the value of landed salmon.

It was estimated that FN people accounted for 30% of the commercial fishing jobs in BC but this only equates to 2,700 jobs — many of which were seasonal and not providing steady incomes.

A stated objective of the Government, through DFO, is to conserve, and protect the fishery resource base and, in partnership with the commercial, FN and recreational users, ensure a sustainable fishery and fishing industry. This objective is pursued by activities in four main program areas:

- Resource Management, based on regional implementation with coordinating direction from the nation's capital
- Conservation and Protection focussing on compliance, policies and programs.
- Aboriginal Affairs in areas where DFO manages the fishery (the Atlantic provinces, and parts of BC, Quebec and the Territories). These fisheries are managed to 'honour' the Aboriginal rights to fish
- Program Planning and Co-ordination.

A key aspect of the current DFO program is seeking to increase and improve FN involvement in fisheries (economic and management) through the 'Aboriginal Aquatic Resource and Oceans Management Program' (AAROM). DFO recognises that different groups are at different stages of development. This program, which commenced in 2004, had a first year budget of \$8 million, and supports the involvement of FN groups in planning and management processes. The goals are to build capacity and help FN groups participate effectively in multi-stakeholder and other advisory and decision-making processes used for aquatic resources and oceans management. The program, based on the wishes of FN people, seeks to assist them to;

- acquire the administrative capacity and scientific/technical expertise to facilitate participation management;
- establish collaborative management structures that contribute to integrated management and planning processes;
- enhance existing collaborative management structures
- strengthen relationships through improved information-sharing between FN communities, DFO and other stakeholders, and among other FN communities;
- contribute to the government's broader objective of improving the quality of life of Aboriginal people.

Although fisheries in Canada face many challenges, FN groups have made significant advancements in their fishing rights and are now able to play a greater role in commercial fisheries. Based on the revised legislation of 2006, the emphasis for Governments and FN groups is currently on shared stewardship for fisheries. In the years to follow, Canada's fisheries will largely be under the control of co-management structures between Governments, FN groups, and industry. These co-management structures will likely begin to rely more on traditional knowledge in managing fisheries. Many of the agreements reached see FN people obtain access rights as a priority allocation, and in some instances are the only allocation in some of their territories. In some cases the Government is obliged to pay compensation to accommodate FN economic interests.

The new Act acknowledges a role for traditional knowledge in decision making, and it also requires that those involved in the administration of the Act seek to manage fisheries in a manner consistent with the constitutional protection provided to existing FN rights. This process is more than mere consultation, and obliges government to give meaningful consideration to FN interests, and at all

stages to act in accordance with its obligations to FN people. These requirements provide immense bargaining power, even in the absence of Aboriginal title being proven, as the Government must still consult and accommodate FN people's needs and requirements.

As a sign of the government's commitment to this process, a 'Trust Corporation' has been established which has \$100 million committed to assist FN communities to improve their social and economic well-being, and to become effective partners in land and resources use and management.

The 'Atlantic Integrated Fisheries Initiative (AICFI), the successor to the MRI, will run from 2008 to 2012, and is designed to assist FN people and their organisations, to maximise potential from existing access, and strengthen the accountability and transparency of their commercial fishing enterprises. AICFI seeks to develop and improve commercial fishing enterprises' governance and business management skills, build capacity in commercial fisheries operations, and have a more effective voice in fisheries co-management. This includes capital and physical resources, human resource development, and fisheries resource management.

The AICFI also seeks positive outcomes for non-FN fishers by providing opportunities for cooperation between stakeholders, improved security for harvesting activities, and enhanced sustainability through collaborative management. Also, existing non-FN fishers can withdraw from fisheries and receive benefit from Government buyout plans. A key factor in all DFO programs is the need to take into account characteristics of FN groups, such as them having small populations, variable education levels, limited fisheries business operations and management experience, and the impacts arising from a long history of inappropriate Government responses and programs.

Findings

Fish resources have an important physical, social, spiritual, economic and sustenance role for Canadian FN people.

From the time of European contact, and the subsequent development of commercial fisheries which focussed on the participation of non-FN people, the exclusion of FN people from the management process and the loss of traditional fishing rights (which included a commercial component), have seriously negatively impacted on FN life. From the 1970s onwards, the recognition and acknowledgment of Indigenous rights started to become an important issue for Government, with the 1982 *Constitution Act* formally recognising the 'existing Aboriginal and treaty rights of Aboriginal people'.

The subsequent legal precedents set by Sparrow, the Van der Peet trilogy and Marshall, lead to significant changes in the way Government responded to FN issues, especially around fishery matters.

The Government's fishery focussed programs, such as the AFS, ATP, ASMI, FOMI, AAROM, MRI, AICFI and Trust Corporation, have all attempted to provide FN people with access to the commercial resource in a sustainable manner, whilst also building capacity to operate in the industry and truly participate in management. This capacity building process is designed to up-skill FN people and with adequate governance and business training, to take advantage of the commercial opportunities – similar in some ways to the Māori mandating process. These matters have been addressed through the provision of substantial financial and human resources, legal recognition, a commitment to consultation, and a shared, inclusive stakeholder approach to management.

This consultative approach has come about to a large extent because the courts have repeatedly encouraged Governments and FN people to resolve issues related to Aboriginal rights by negotiation, rather than litigation. These negotiations strive to find a balance between providing FN people with

a greater role in management and commercial use of fish, while protecting the interests of non-Aboriginal fishers.

Although modern treaties are negotiated with such an approach in mind, the reality is that such negotiations may take many years to resolve fully, so the AIPs process provides some level of certainty to stakeholders as to the direction being taken, and negotiations can then be allowed to take their full course.

The Government ensures FN issues are at the forefront of discussion by having regionally implemented management and a program that focuses on Aboriginal Affairs to 'honour' the Aboriginal rights to fish. There is also an acknowledged role for traditional knowledge in decision-making and processes, which oblige government to give meaningful consideration to FN interests, and at all stages to act in accordance with its obligations to FN people.

Fishing is an important component of FN people's lives. FN people account for 5% of the total BC population but they own about 30% of the commercial licences, annually landing fish worth \$52 million - 14% of the total landed value. FN people also hold 30% of the commercial fishing jobs in BC.

Conclusion and Key Lessons

The rights of Canadian FN people for FSC purposes have been recognised for a number of years, but their commercial rights have been much less clear. The Marshall decision established a communal right for FN people to earn a 'moderate livelihood' from commercial fishing. This in many ways provided Government with the impetus it needed to develop and increase opportunities for FN people to be involved in fisheries from a commercial and management perspective.

The development of a series of projects and programs by the Government from the 1970s onwards, with significant resourcing, looked to acknowledge Indigenous rights and develop means to increase participation in the commercial fishing industry, and to empower FN input to management through a shared stakeholder process. These programs have provided a step towards greater Indigenous economic and social benefits arising from the fishing industry, and seek to increase the capacity of FN people to be more engaged in contemporary management and fishing. This appears to have had some success, seeing FN people now being major commercial operators in BC, significant participants in the employment derived from fishing, and having a strong and legislated voice in the management of fishing.

The legislative approach undertaken in Canada, and the development of modern treaties, has shown that such an approach has the ability to provide certainty and opportunity for FN people as well as other stakeholders into the future. On the other hand, the encouragement of the Canadian courts for Governments and FN people to resolve issues related to Aboriginal rights by negotiation rather than litigation appears to provide tangible outcomes for FN people and the community as a whole.

The Torres Strait Experience

Introduction

Recent events in the Torres Strait provide a great deal of relevant information about fishing-related economic development in remote Indigenous communities and Indigenous involvement in co-management of commercial fisheries. While Torres Strait fisheries management arrangements are vastly different to those in the Northern Territory, there are similarities in the aspirations of the traditional inhabitants.

Torres Strait Islanders hold a form of communal title to their land, but do not have any powers to restrict access to their sea country. In the 1980s the Commonwealth and Queensland governments formally recognised the significance for Torres Strait Islanders of the sea and fishing. This recognition was formalised through a number of legislative and other arrangements that aimed to provide Torres Strait Islanders with both economic development opportunities and opportunities for meaningful participation in fisheries management.

While these arrangements did not lead to instant economic independence, there have been many positive outcomes and indications of more to come. Economic development is a slow and exacting process, and opportunities in the Torres Strait continue to evolve. Opportunities to be involved in fisheries management have been taken up enthusiastically. Independence from a welfare based economy may be a long way off, but it is not an unrealistic long-term goal.

This case study reports on the broad nature and outcomes of new post -1985 arrangements for fisheries management in the Torres Strait. It is entirely based on desktop research and draws on published independent research along with reports and publications of a number of relevant organisations.

Background

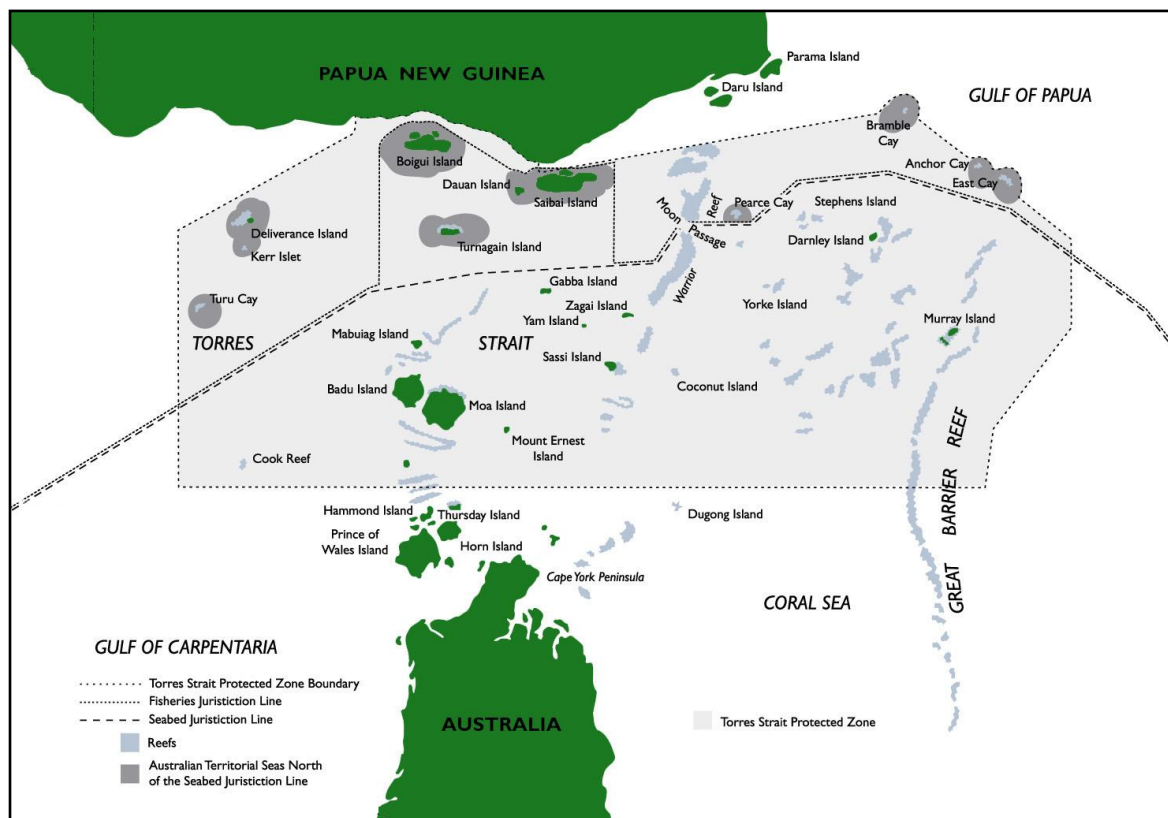
The region known as the Torres Strait includes the waters and islands between Cape York in Queensland and the nearby south-west coast of Papua New Guinea. The total area is approximately 200km by 200km –an area of around 40,000 km². The maritime boundaries between Australia and Papua New Guinea in this area are shown in map 1.

The Torres Strait region includes 18 island communities along with the Queensland mainland communities of Bamaga and Siesia. About 6,500 Torres Strait Islanders live in the region. They are a seafaring people who have always relied on the sea to provide the majority of their food and commodities for trade. They are closely related to their Melanesian neighbours in Papua New Guinea and the Indonesian province of West Papua. They have a long history of trading with those neighbours and other visitors from further afield.

The region is unique in that it lies across an international border and many aspects of the management of the area are subject to a bilateral agreement between Australia and Papua New Guinea: the *Torres Strait Treaty* (the Treaty). The Treaty came into effect in 1985. It recognises, for the traditional inhabitants of the area (both Australian and Papua New Guinean), a limited right of free movement between the islands and waters of the Torres Strait and the adjoining coastal land of PNG. The right of free movement is only for the pursuit of traditional activities which are defined to include: harvesting fish and other marine animals; gardening and hunting on land; and attending ceremonies and other cultural events. It also preserves customary fishing rights and recognises the right for traditional inhabitants to share in the economic benefits generated by commercial fishing in the region.

The Treaty, along with the *Torres Strait Fisheries Act (1984)*, establishes the *Torres Strait Protected Zone* (the Zone) and the *Torres Strait Protected Zone Joint Authority* (the PZJA). The Zone includes both Australian and PNG waters. Commercial fishing in the Zone is managed by the PZJA. The three members of the PZJA are the Commonwealth fisheries minister, the Queensland fisheries minister and the chair of the Torres Strait Regional Authority (a Commonwealth funded authority responsible for regional development). The PZJA members are supported in their fisheries management responsibilities by the Australian Fisheries Management Authority.

Commercial fisheries in the Torres Strait include prawn, tropical rock lobster, Spanish mackerel, reef line, pearl shell, barramundi, crab, trochus and sea cucumber. In the last decade, the catch values of these Torres Strait commercial fisheries have steadily declined from around \$50m to around \$25m. Most of the decline has resulted from falling revenues in the prawn fishery resulting from falling international prawn prices and the increasing value of the Australian dollar. The major contributors to industry revenues are prawn and tropical rock lobster, each of which currently generate around \$10m per annum revenue. The Spanish mackerel and reef line fisheries each generate between \$1m and \$2m per annum revenue.



Map 1: The Torres Strait and the Torres Strait Protected Zone

Findings

Customary fishing rights are recognised and guaranteed in the *Torres Strait Fisheries Act (1984)*. Torres Strait Islanders make extensive use of these rights. Seafood harvesting is a major activity for most Islanders and seafood forms a major part of Islanders' diets.

The Torres Strait economy is largely welfare based with recent annual Community Development Employment Project (CDEP) payments in excess of \$20m. Commercial fishing is by far the most significant economic activity in the region. At the time of the creation of the Torres Strait Protected

Zone (in 1985) there were very few Islanders owning and/or operating commercial fishing enterprises. A few Islanders were involved in commercial fishing, but almost always as employees of non-Islander commercial fishers. Given that total revenues from commercial fishing have been as high as \$48m in the past, it is not unreasonable to surmise that total crew payments may have been in order of \$15m in some years. If Islanders were to take up a significant proportion of this income it would have a substantial positive effect on the local economy.

The new management arrangements introduced in the *Torres Strait Fisheries Act (1984)* had objectives beyond simply the good management of the marine resources of the region. The Act recognised the rights of the traditional inhabitants of the region to benefit from commercial fishing. It was some time before these rights to economic benefit received much attention. In the period immediately after the Act was introduced, most attention was paid to reining in effort in the rapidly expanding prawn trawl fishery and introducing management plans in the other fisheries.

Amongst the traditional inhabitants, there was always a great deal of dissatisfaction about the fact that non-Islanders owned the valuable commercial fishing rights in the area. There was also concern about the long-term effect of commercial fishing on local fish stocks. The introduction of the new arrangements in the 1980s was enthusiastically welcomed by the Islanders.

The goal of meaningful involvement in fisheries management was not quickly realised. Managing commercial fishing became the responsibility of the Protected Zone Joint Authority (PZJA) in 1985. The Authority originally consisted of the Commonwealth and Queensland fisheries ministers. The Australian Fisheries Management Authority (AFMA) became the secretariat and support agency for the PZJA. In the mid 1990s the chair of the Torres Strait Regional Authority became the third member of the PZJA. This gave Islanders a more direct voice in management decision making.

Torres Strait Islanders do not participate in the prawn fishery. This is generally attributed to prawn trawling requiring extensive capital investment. The fishery also involves very high production costs. Many Islanders do participate in the commercial tropical rock lobster, Spanish mackerel and reef line fisheries. Many of the new management arrangements were largely designed to give Islanders opportunities to enter the commercial sectors of these fisheries. A new form of commercial license, the traditional inhabitant license, was introduced. Restrictions were placed on any expansion of the non-traditional inhabitant sector.

The most important fishery for Islanders is the tropical rock lobster fishery. While the new management arrangements were designed to prevent any new non-Islander entrants to the fishery, allocation of the resource between the commercial and customary sectors was not clarified until quite recently. Over the years an unwritten arrangement had evolved that required non-Islander commercial fishers to harvest in deeper water and areas remote from Islander communities, while the shallower areas and areas close to communities were the preserve of both commercial and customary Islander fishers. This arrangement began to break down in the early 2000s, possibly because there were two years of poor landings around that time.

In 2005 there were several incidents of confrontation between Islanders and non-Islander rock lobster fishers. The PZJA decided to make a formal allocation of catch between the three sectors - customary, commercial Islander, and commercial non-Islander. It was eventually agreed that available catch would initially be split 50:50 between the Indigenous and non-Indigenous sectors. A program was initiated to buy-back non-Indigenous licenses and allocate new catch entitlements to Islander fishers until a 70:30 split could be achieved. This buy-back process is now complete.

A \$10.2m government funded buy-back was recently completed in the reef line and Spanish mackerel fisheries. All commercial fishing rights in these two fisheries are now owned by Islanders. Because Islander fishers lacked the equipment and infrastructure to fully utilise these licenses,

several licenses are being leased back to previous owners. This approach has two advantages: lease arrangements generate a modest cash income and long established markets can continue to be serviced and maintained.

Most Islanders participating in commercial fishing are doing so on a part-time basis. They typically fish from small outboard powered aluminium dinghies, and they fish close to their home communities. Most part-time fishers also have employment with the CDEP program, and so their fishing income is limited to the CDEP supplementary income limit (currently \$27,014pa). They often sell the higher value part of their catch through a local community council 'co-op' arrangement, and the remaining catch is kept for family consumption. A small proportion of license holders fish more intensively and generate all of their income from fishing.

Over the last 20 years there have been quite a few studies and reports analysing the impediments to Torres Strait Islanders taking up opportunities in commercial fishing. There are a number of common themes in many of those reports. Most have identified the major hurdles to be:

- lack of capital required to set up enterprises on a true commercial scale
- lack of business management and marketing skills in the Islander community
- lack of technical skills for maintaining refrigeration systems
- preference for small scale, part-time fishing operations
- unwillingness to undertake distant or extended fishing trips
- unwillingness to lose CDEP employment
- difficulty for many part-time fishers to choose ideal tide/weather conditions because of their CDEP commitments.

These problems are currently being addressed in yet another study being conducted for the Commonwealth Department of Agriculture, Forestry and Fisheries. The report, in the form of a business plan, will outline strategies to improve take up of opportunities in the tropical rock lobster fishery. It will be available early in 2010.

Discussion

While there are significant differences between the circumstances of Torres Strait Islanders and traditional owners of coastal Aboriginal Land in the Northern Territory, the two groups have similar aspirations for commercial fishing-based economic development and meaningful involvement in fisheries management.

It is clear that few, if any, Torres Strait Islanders are in a position to invest in capital intensive fishing operations. Many Islanders seem to be content to operate at a less intensive level than is the norm in the non-Islander commercial fleet. These facts are sometimes put forward as failings in the Torres Strait arrangements, and they are often worded as to imply that the major blame for these 'failures' lies with the Islanders. This is quite unfair. Islanders quickly utilised their customary fishing rights because they had the skills and resources available to do so. There are no development programs in place to give Islanders access to the capital, training, support and mentoring necessary for them to set up intensive commercial fishing operations. The Torres Strait Regional Authority is resourced to provide economic development assistance to Torres Strait Islanders but, while it encourages Islanders to take up opportunities in commercial fishing, it does not provide loans or grants for the establishment of fishing enterprises.

The transfer of ownership of commercial fishing rights from non-Islander commercial fishers to Islanders has not been a straightforward process. Existing fully transferable, non-Islander owned commercial licenses have been bought back and retired. The new licenses issued to Islanders in their place have often been quite different in nature. In many cases there have been effective restrictions on transferability and fishing capacity. This approach was intended to both reflect the smaller scale

of operation favoured by Islanders, and to allow greater numbers of licenses to be issued. Of course the approach also acts to limit the choices available to the new license owners. An Islander license owner often does not have the option to lease out his license rather than operate it. This option is available to commercial license holders in most Australian fisheries, and is a widely used business strategy in the industry. It seems that the commitment to supporting commercial fishing based economic development is, to some extent, conditional on fishing enterprises conforming to a particular business model.

Participation in fisheries management has been limited but apparently effective. Changes continue to be made to increase Islander ownership of commercial fishing rights, and other successful management strategies are being reflected in apparently healthy fish stocks. The next step will be to pay greater attention to economic outcomes and find ways to maximise the economic benefits for Torres Strait Islanders.

Conclusion

The changes to fisheries management and fishery ownership in the Torres Strait have been slow but significant. There has been a genuine recognition by governments of the Torres Strait Islanders' rights to control and benefit from the marine resources in the seas surrounding their country. While the implementation of government policy has not been rapid, it has been persistent and there is cause for confidence that it will provide positive outcomes.

There is a long way yet to go in the Torres Strait. New, more appropriate business models for commercial fishing enterprises need to be developed. Islanders need to have access to skills training and mentoring so that they have choices about how they approach commercial fishing. When and if people are ready, there will need to be support for the establishment more efficient and perhaps bigger fishing enterprises. Islanders should not be forced into adopting business models they are not comfortable with.

Events in the Torres Strait in recent years have great relevance for the Northern Territory. If the traditional owners of coastal Aboriginal Land in the Northern Territory are to benefit from involvement in the commercial fishing industry, they will need to learn many of the lessons that the Torres Strait experience can teach. The Torres Strait has shown us that, given the opportunity, Indigenous people have a lot to offer in the management of aquatic resources in their seas. It has further shown that commercial fishing can play a significant role in economic development for remote coastal communities.

This case study merely scratches the surface of the Torres Strait fisheries arrangements. There would undoubtedly be great benefits for all parties if the body of knowledge generated in the Torres Strait region could be accessed by as many people as possible. There is an opportunity to learn from both the mistakes and the successes of the Torres Strait arrangements.

The Cobourg Marine Park Experience

Introduction

The consultation and negotiations undertaken at Cobourg during the development of management plans for the marine and terrestrial parks, took place in a very complex political, legal, social, economic and cultural environment. Notwithstanding, through a process of determination, dedication, inclusion, cooperation and good will between Indigenous Traditional Owners, Government and other stakeholders, a ground breaking, comprehensive, agreed position was reached on marine management.

After a number of years of negotiation, in 2007 this culminated in the enactment of the *Cobourg Marine Park Plan of Management* (CMPPM), complete with a multiple use zoning scheme to manage activities in the Marine Park.

This study reports on the drivers, processes and outcomes that arose from the development of the CMPPM. It is based on the experiences and knowledge of an Indigenous person who was heavily involved in the CMPPM process, and a number of relevant reports and publications.

Background

Cobourg Peninsula is situated approximately 220km north-east of Darwin. The area hosts the Garig Gunak Barlu National Park, which includes both the Cobourg Marine Park and the Cobourg Sanctuary (basically a terrestrial park). The *Cobourg Peninsula Aboriginal Land and Sanctuary Act* (CPALSA) was enacted in the 1970s to manage the Cobourg sanctuary.

Cobourg Marine Park is located in the waters surrounding Cobourg Peninsula and covers approximately 230,000ha. The Marine Park was first declared in 1983, under the *Territory Parks and Wildlife Conservation Act*, and was re-declared in 2002 to recognise the possibility of native title interests in the Park. The Marine Park is part of the larger Garig Gunak Barlu National Park. The Cobourg Sanctuary extends to low water mark and includes the inter-tidal zone and waters covering the peninsula, whilst the Marine Park extends seaward from the low water mark.

The CPALSA established an eight member Board to jointly manage the land of Cobourg Peninsula as a National Park. The Board consisted of four Aboriginal members, representing the four clans identified at the time, and four other members appointed by the Government. In early discussions with the NTG the Board requested that the Director of Fisheries or his/her delegate become a permanent member of the Board. This was agreed to, and has been especially effective in relation to dealing with issues surrounding the Marine Park, fishing and aquaculture.

The chair of the Board is elected from the Aboriginal members and has a casting vote in the event of a deadlock. In the event of a difference between the Board and the NTG, the Board's decision prevails.

In the early 1990s the Traditional Owners of Cobourg Peninsula expressed their desire to have the Board manage the Marine Park. Initially the NTG voiced concerns as to the merit and complexity²⁸ of the proposal, but ultimately it was agreed to. As a result of this agreement the act was amended to include the marine park and became the *Cobourg Peninsula Aboriginal, Land, Sanctuary and Marine Park Act* (CPSMPA). The Traditional Owners of Cobourg had long awaited this event, and the name of the park was changed from Cobourg to Garig Gunak Barlu, to reflect the new dimensions to the

²⁸ the area was already managed under three pieces of NT legislation Complex Cobourg Peninsula Aboriginal, Land, Sanctuary and Marine Park Act (CPSMPA), the Territory Parks and Wildlife Conservation Act (TPWCA) and the Northern Territory Fisheries Act (Fisheries Act)

Park. The new name had special significance as; Garig is the name of a clan of Cobourg that has no living members, Gunak is the name for land, earth, and Barlu the name for deep blue sea. Traditional Owners, through the Board, then commenced discussion and negotiations with other user groups regarding a proposed zoning scheme for management of the Park.

This phase was difficult and time consuming, but ultimately achieved the best results possible at that time²⁹. Resolution was reached through the use of an inclusive and open process, unlike previous negotiation processes used to resolve issues.

Over the period of consultation and negotiation the Board invited a range of user groups to attend meetings to discuss a plan for the zoning and associated usages of the marine park. This was, in the main, led by the Indigenous members of the Board, with the NTG members providing timely advice on issues as they arose. The invited groups were the;

- Amateur Fishermans Association of the NT (AFANT)
- Fishing Tour Operators (FTOS)
- Northern Prawn Fishery (NPF)
- Northern Territory Seafood Council (NTSC)
- Pearling Industry
- Trepang Licence holder
- Other park users.

This process allowed face to face discussion and negotiation both within and between the groups, without NTG agencies or employees acting as intermediaries. This meant that when an issue arose during discussions and negotiations, over either a boundary or zone use, it could be resolved there and then between the affected groups, allowing stakeholders to express their views of the matter with the legitimate or key players, curtailing any toing and froing between groups who were not part of the affected user group.

The negotiation process took five plus years to reach conclusion, which included changes to the CPALSA and the draft planning for Marine Park's zoning scheme. By using this face to face approach, even though initially the groups were diametrically opposed and wary of each other's motives, a positive outcome was reached.

At the final outcome only two issues were not unanimously resolved and agreed to. These were; firstly a request for one km buffer zones around outstations to allow for residents' privacy. This matter caused concern to the non-Indigenous members for two reasons; one being that outstations would be built all along the coastline, potentially restricting access to the whole NT coastline, which in turn would be an acknowledgement and recognition by user groups that Indigenous peoples had exclusive rights to the seas.

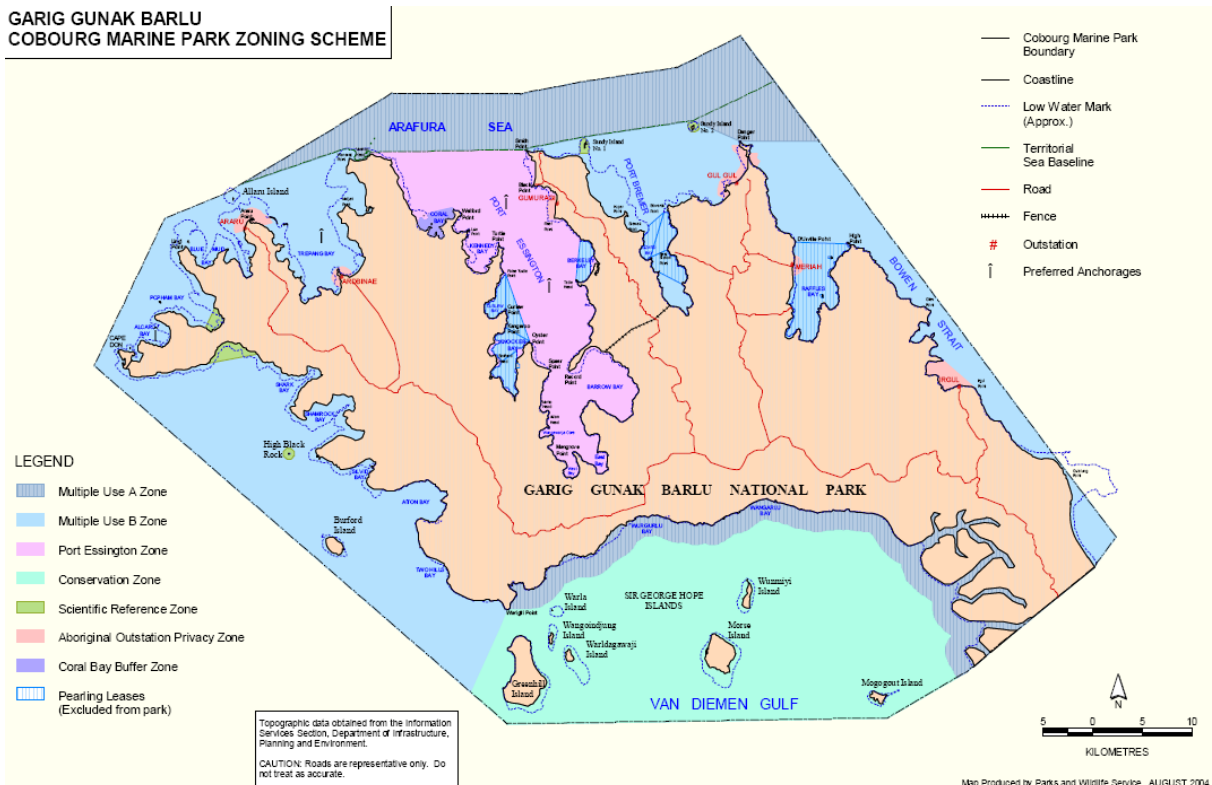
The second issue related to the Board's desire to make decisions in relation to fisheries management; especially in setting catch limits that may be inconsistent with the rest of the NT. The Board made it clear that if fisheries management issues that affected any of the user groups were to be discussed at any Board meetings, the relevant groups would be invited to have input into the Board decision-making process, but this issue could still not be resolved.

In 2007 the CMPPM came into force, with a multiple use zoning scheme put in place to manage activities in the Marine Park (see Figure below). Fish and aquatic life in the Marine Park (below low

²⁹ During this time the Croker Island Native Title claim to the seas had begun under the Native Title Act (NTA), but no decision had been made. The Croker Island decision was later handed down and was later challenged at Blue Mud Bay where the same result was found under the NTA. The court case though gave rise to consideration of using the Aboriginal Land Rights Act (ALRA) to challenge the ruling

water), with the exception of turtle, dugong and crocodiles, are regulated under the *Fisheries Act*. A Fishery Management Area Advisory Committee (FMAC) has been established under the *Fisheries Act* to provide advice to the Director of Fisheries on the appropriate management of fish and aquatic life in the Marine Park. The committee consists of commercial, recreational, and prawn fishers, pearling and traditional Aboriginal owner interests. This committee has also operated as an advisory group to the Cobourg Board and as a forum to facilitate key stakeholder input into the preparation of the CMPPM.

It is intended that the area of the Marine Park and the intertidal area of the Sanctuary will be managed under a Fishery Management Area Management Plan (FMAMP) in accordance with the *Fisheries Act*, with the provisions of the FMAMP mirroring those established in the CMPPM.



It should be noted that the Cobourg Board has requested the NTG consider amending the CPSMPA to enable the Board to determine bylaws for the Marine Park. At this stage, the Board only has the power to determine bylaws for the Sanctuary to the low water mark.

Discussion and Findings

A distinguishing feature of this complex negotiation was that it was carried out by, within and between local people, groups and stakeholders, who are now familiar with the process and should be more comfortable in dealing with each other in any future discussions or negotiations.

To only have two unresolved issues from the Cobourg process (outstations and Board powers to make laws related to fishing in the Marine Park) is quite outstanding. If the negotiations were taking place currently, these matters would have been addressed to a large extent as of a result of the Blue Mud Bay decision, and Government changes to policy on outstation funding

The Cobourg process has shown the benefits of addressing issues at a regional level. As such, should the NTG consider moving to a more regionalised fisheries management approach then structures and processes similar to those used at Cobourg may be an effective way to have real Indigenous input

and participation into the process. The regional approach used at Cobourg provided a means to deal with fisheries management issues at a local level so that, real or perceived issues, surrounding matters such as increased and competing pressure on fish stocks by user groups in a localised area, can be addressed. Inclusivity and a real role in the decision-making process can lead to increased Indigenous coast community participation.

Processes and subsequent impacts (negative or positive) will often influence how coastal Indigenous communities are going to participate in processes. The ability of Indigenous peoples to be involved in decision making, monitoring, compliance and enforcement roles within their areas, would be seen as having real outcomes in terms of participation, recognition and equity.

As the Federal Government is moving toward the establishment of a series of Marine Protected Areas in all of Australia's waters, regional Boards, such as Cobourg, may be in a better position to deal with that process in a local sense.

The big difference for Indigenous people between now and when the Cobourg negotiations were taking place is, of course, the Blue Mud Bay decision, which clearly gives Indigenous people a greater level of recognition, hence a greater level of expectation. However the expectations may be greater than what may either immediately or ultimately be achieved.

The negotiation period for Cobourg may have been shorter and the outcomes different if the Traditional Owners had the benefit and recognition of the Blue Mud Bay decision behind them. As it was, they were exercising their rights and responsibilities without that formal recognition.

Despite the above, a result was achieved that delivered the first of its kind in Australia. What Cobourg has shown is that without any significant legislative or judicial support the Traditional Owners were able to negotiate, with other user groups, a comprehensive agreement that will enable the future management of a marine and terrestrial park for the benefit of all users. The driver for this was;

- the determination of the Traditional Owners to act in good faith to reach a position through compromise in an open and transparent way
- the dedication and support of staff (NLC, PWC and Fisheries)
- the good will of all those involved.

By not having any precedent to compare to, the participants were not afraid to negotiate as there were no external imperatives or drivers, and the groups could reach agreement according to what they considered to be good outcomes, and according to the values or rankings they gave to; ecological sustainability, social/cultural sustainability and economic sustainability.

As a guiding rule it is believed that greater formal recognition of Indigenous people and their rights will give rise to real participation, which will lead to increased equity. Greater equity creates more participation, which brings further recognition, and on the cycle goes.

Indigenous Involvement in Fishing and Seafood Industry in the NT

Executive Summary

The recorded history of Aboriginal involvement in the seafood industry predates European settlement by several hundred years. The most spectacular example was the export of trepang to Southeast Asia: a huge industry that took the form of a joint venture arrangement with Makassan fishermen. At today's prices, the industry was worth up to \$100m per year. The industry today contributes just \$2m or so per year to the NT economy.

Current annual GVP of the NT seafood industry is around \$54 million. The Commonwealth managed NPF, which extends from Cape York in Queensland to Cape Londonderry in Western Australia, is valued at around \$70 million GVP, with a significant proportion of the catch coming from waters adjacent to the NT.

Indigenous people currently own less than 2% of the licenses and make up less than 3% of the industry workforce. The declining participation rate over recent times has been caused in part by changes in the industry: more restrictive licensing; very high license values in closed fisheries; and the need to use high tech and intensive fishing methods to generate a reasonable return on a license investment. It seems absurd that a valuable industry operates on the doorstep of coastal TOs and yet contributes nothing to remote community economies.

The customary sector of remote community economies accounts for 30% of economic activity while the market sector accounts for just 10%. Many analysts of community economics overlook the customary sector and assume that increasing the size of the market sector is the most effective path to economic growth. Many major development projects that focussed solely on the market sector have failed in the past, perhaps because they lacked any strong connection with community life and values. Economic development strategies that are entwined with customary activities have a better record of success.

The customary sector interacts with the market and/or public sectors in many successful enterprises: art and craft production; land and sea management activities; and carbon credit production through fire abatement are a few of the better known examples. There is good reason to incorporate customary sector activities when designing economic development projects in remote communities. This approach will at least ensure enthusiastic community support for the project.

While fishery rules preclude any overtly commercial activity, customary fishing continues to play an important role in coastal community economies. Most analysts draw a clear distinction between customary and commercial fishing: customary fishing is for subsistence purposes only while commercial fishing is for economic gain. Perhaps a successful fishing-related economic development model might incorporate aspects of both customary and commercial fishing.

There is a clear need for research to be conducted into reasons for the decline of Aboriginal participation in the fishing industry. Pathways for remote community groups to again get involved in commercial fishing need to be identified. Establishing these pathways will likely require changes to fisheries management arrangements. There is enthusiasm for establishment of commercial fishing projects in remote communities. It is important to find out how far this enthusiasm extends, and how it can be used to support economic development projects.

Background to Case Study

The history of participation in fishing by Aboriginal people in the Northern Territory has not been widely studied or recorded. Much of the information for this case study is drawn from the author's experience living and working at remote coastal communities between 1974 and 1985 along with later experience in the commercial fishing industry.

No analysis of the “*key factors for successful Indigenous economic and regional development in the fisheries sector*” can be complete without looking at previous experience in the NT. It is also important to look at impact on economic and regional development of projects related to other industries.

In 2008 the total combined value of production for Northern Territory managed wild-catch fishing and aquaculture was \$54 m. This does not include the value of prawns caught in waters off the Northern Territory. The Commonwealth managed Northern Prawn Fishery covers an area from Cape York in Queensland to the Kimberly coast in Western Australia. A little over half of the prawn fishery lies off the Northern Territory coast. In 2008 the value of the prawn catch was around \$70 m.

In 2007, the Australian Bureau of Agricultural and Resource Economics estimated that 849 people were directly employed in the seafood industry in the Northern territory. There are around 200 further jobs that exist primarily to support the seafood industry: at slipways, chandlers, marine engineering workshops, port and wharf services, marine fuel suppliers, training providers, government departments and so on.

Indigenous people or organisations are known to hold just 4 of the 270 or so commercial fishing licenses in Northern Territory managed fisheries and none of the 52 active licenses in the Commonwealth managed Northern Prawn Fishery. While Indigenous people make up 30% of the Northern Territory population and control over 80% of coastal land, they hold just 1.5% of the commercial fishing rights and hold a minor shareholding in just one of the 14 active commercial aquaculture operations in the Northern Territory.

Indigenous employment in the fishing and aquaculture industries is also disproportionately low. While Indigenous employment data are not formally collected, anecdotal evidence suggests that perhaps 30 Indigenous people are employed in the industry – around 3% of the total workforce.

Historically there was much greater Indigenous involvement in commercial fishing. The sea cucumber (trepan) fishery provided extensive opportunities for employment and trade for hundreds of years until the early 1900s. Indigenous people also found employment in the trochus and mother of pearl dive fisheries up until the 1930s.

In the 1960s and '70s there were a number of community based fishing projects established with mission and/or government support. Most top end coastal communities had a fishing project of some kind during this period. These projects typically incorporated a frozen storage facility, an ice making system and a number of small dories or dinghies. The majority of the catch was sold or distributed within the community, although some projects sold to surrounding communities or even to Darwin wholesalers. It was also common for communities to use large fixed arrow-head style intertidal fish traps to supply fish for local consumption. Besides providing employment, these projects also contributed to community health standards and wider local economies. Sadly, few fishing projects were economically viable and most failed as wage expectations grew and funding sources dried up. The final blow was the banning of arrow-head fish traps in the 1980s.

Changes to fisheries licensing in the 1970s and 80s created a much more difficult environment for small community-based fishing ventures. The move towards single-species fisheries and limited entry licensing has led to the value of commercial fishing licenses becoming very high. Most commercial fishing operations now require an investment of many hundreds of thousands of dollars. The high cost of entry means that intensive fishing techniques must be used to make fishing enterprises viable.

More recently the Aboriginal Coastal Fishery license was an ill-advised attempt to provide commercial fishing opportunities for people in remote communities. License holders are limited to using recreational equipment and are not permitted to sell fish outside their home community. NT Fisheries concedes that the ACF license arrangement has not worked and is currently reviewing it with a view to introducing a more appropriate license for coastal communities.

Customary fishing continues to contribute to local economies in coastal communities. The product of customary fishing is consumed within family and clan groups and provides health and nutrition benefits along with its contribution to local economies.

Recognition of Indigenous ownership of much of the Northern Territory coast has not led to allocation of any commercial fishing rights. Since the introduction of the Aboriginal Land Rights (Northern Territory) Act in 1976, Aboriginal participation in commercial fishing has declined steadily and currently stands at an all time low. A valuable industry operates on the doorsteps of Northern Territory traditional owners of sea country, yet there is very little ownership of, or participation, in that industry by Aboriginal people.

This case study investigates the reasons for this failure and offers some suggestions about future development.

Findings and discussion

Fishing in remote Indigenous communities

Involvement in commercial seafood harvesting is a longstanding practise for Aboriginal people living in Northern Territory coastal regions. This history of commercial utilisation of aquatic resources is not widely acknowledged. Most commentators categorise customary fishing as a subsistence, rather than commercial, activity. This has led to the widely held but incorrect view that Aboriginal people have no tradition of commercial seafood harvesting.

The trepang industry was Australia's first recorded export industry. The earliest records of trepang collecting voyages were made by the Dutch colonisers in Java - they refer to Makassans visiting the north Australian coast to collect trepang as early as 1588. Studies have suggested that the trade reached up to 300 tonnes dried weight per year (across all of northern Australia). At current prices this would be valued somewhere near \$100m – vastly more than the current value of the trepang fishery. The Australian Government's decision to exclude Makassan trepangers in the early 1900s removed access to the market and the industry quickly collapsed.

It seems that Aboriginal people were involved, with the Makassans, in a successful management arrangement for sea cucumber stocks. The current maximum sustainable yield in the fishery is around 10% of the estimated maximum harvest in Makassan times. Those much greater yields were possibly supported by stock enhancement: intertidal cage-like structures that may have been used as hatcheries and nurseries have been found in many of the traditionally productive trepang areas. The owner of all NT trepang licenses is currently investing heavily in research into stock enhancement techniques.

Coastal Aboriginal people have traditionally harvested the sea for food. Mostly this was for family and clan consumption, although there is evidence that seafood and other marine products were also used as commodities in traditional systems of local and regional trade. Sophisticated harvest equipment was developed, including various fish traps, woven nets, hooks, spears and even the use of chemicals to stun fish. The availability of efficient harvest technology meant harvests had to be regulated. This was achieved through local systems of access control and restraint entwined in traditional law and overseen by local custodians.

Customary, or subsistence seafood harvesting continues to play an important part in the economies of coastal Indigenous communities. The Fisheries Act prevents any overt commercialisation of customary fishing. Fish harvesters can share their produce with family and friends, but they cannot sell it. Customary fishing is an 'export substitution' activity: it reduces the proportion of limited financial resources that must be used to buy food. It also substitutes natural and healthy foods for processed and take-away foods.

In more recent times, particularly the 1960s, 1970s and early 1980s, there were a number of community based fishing projects established with mission and/or government support. Most top

end coastal communities had a fishing project of some kind during this period. These projects typically incorporated a frozen storage facility, an ice making system and a number of small dories or dinghies. The majority of the catch was sold or distributed within the community, although some projects sold to surrounding communities or even to Darwin wholesalers. It was also common for communities to use large fixed arrow-head style intertidal fish traps to supply fish for local consumption. Besides providing employment, these projects also contributed to community health standards and wider local economies. Sadly, few fishing projects were economically viable and most failed as wage expectations grew and funding sources dried up. The final blow was the banning of arrow-head fish traps in the early 1980s.

Notable fishing projects were established at Wadeye, Maningrida and Galiwinku in the 1960s. The Wadeye and Galiwinku projects were sponsored by local mission organisations, while the Maningrida project was set up and managed by the Commonwealth Government. All three projects used small open boats mainly for gill netting. Onshore facilities included freezers, rudimentary ice making equipment and chilled storage arrangements. All of these projects were managed by people from outside the community, and all were subsidised in various ways. Seafood was sold or distributed within the community. Fisheries licensing requirements were quite straightforward in the 1960s, and community groups were free to establish fishing projects with few gear or other restrictions.

The Maningrida and Wadeye projects both ended in the early 1970s through lack of funding and/or loss of key managers. The Galiwinku project continued to thrive, but had adopted a more commercial outlook and began to seek markets outside the community. In the mid 1970s its base was moved from Elcho Island to Gove Harbour to be better placed for access to markets and transport. The business was eventually sold to a private owner in Nhulunbuy where it continued to operate until just a few years ago.

Smaller projects operated in many other communities. Fixed arrowhead fish traps were common at coastal communities until they were banned in the early 1980s. Remnants of those traps can still be seen at many locations around the Northern Territory. Fish traps are very effective and, ironically, their effectiveness led to them being outlawed. Despite decades of successful and incident free use of fish traps, fishery managers were concerned that they would not be properly managed.

More recently community groups have been able to apply for the Aboriginal Coastal Fishery license, a quasi commercial license offered as an incentive for people to establish small scale fishing ventures at remote communities. The license was very restrictive: it allowed no reasonable chance for a venture to be economically viable. The only net allowed was up to 15m of gill net with smaller than 50mm mesh. This is the sort of net recreational fishermen use to catch small baitfish. Much more efficient fishing gear is necessary to operate commercially. The rules that apply to the Aboriginal Coastal License are reportedly under review.

In recent years a small number of commercial licenses have been purchased by Aboriginal people or organisations. Four remain in Aboriginal hands. Funding and support for these purchases most often required that the licenses be operated rather than leased to other fishermen. This requirement precluded the use of a very common business model in the seafood industry: ownership of licenses for the purpose of generating lease income. Few Aboriginal people have the skills and knowledge necessary to operate licenses at the level of intensity necessary to make a commercially adequate return on a license investment. Many of the licenses purchased over the years were eventually sold to offset operational losses of enterprises that realistically had very little chance of success.

Economic development in remote Indigenous communities

The development problem in remote Indigenous communities is unusual in the broader Australian context. Most Australian regional towns have economies based on a substantial market (private) sector supplemented by a smaller state funded (public) sector. Altman (2003) describes the economies of remote Indigenous communities as 'hybrid economies', with market, state and

customary (or Aboriginal) sectors interacting in different ways. The customary sector of remote community economies is often overlooked by analysts and proponents of economic development projects. It includes activities such as fishing, hunting and food gathering; production of art and crafts; land, habitat and species management; and performance of traditional obligations. Altman found that in 2003 the customary sector contributed around 30% of economic activity in remote communities, while the market sector contributed just 10%.

In the broadest terms, economic development is the outcome of programs that improve the economic well-being and quality of life in a community. It refers to levels of wealth and prosperity for individuals and derives from opportunities for employment and/or income producing enterprise on one hand, and access to reasonably priced goods and services on the other. It is important to recognise that economic well-being can be generated equally effectively by increasing income or reducing costs.

Economic well-being is relatively easy to measure in most communities. The Australian Bureau of Statistics provides an estimate of economic well-being in all Australian communities in the 5-yearly census data. This measure is a useful guide in most communities, although less so in communities where subsistence activities (hunting, fishing and other wild food gathering) make up a significant proportion of the economy. This customary economy activity is not taken into account in the ABS census.

Evaluating quality of life is much more subjective. Some factors can be measured using conventional social and economic indicators. Others factors like freedom, happiness, social inclusion, environmental health, and cultural autonomy are far harder to measure. This often leads to imbalance as programs and policies are created to fit the readily available economic evidence, often overlooking important evidence that is more difficult to find and assess.

The market sector includes income generated through the production, sale and trading of goods and services. In communities this includes things like market gardens, shops and other commercial outlets, and 'development project' style export enterprises such as forestry or pastoral projects. Many of these enterprises fail, especially the big development project style enterprises. Successful enterprises, most often community stores and other commercial outlets, are invariably steered by a key person (usually not a local person) with management skills and an understanding of commercial operations. They often also have the advantage of a monopoly position in the local market.

In most remote Indigenous communities there is no strong tradition of Western style capitalism. The market sector of the economy is small and usually managed by outsiders. Few kids grow up in an environment where they pick up the skills and attitudes that will easily lead to successful careers in the private sector: they need role models and mentors in their own communities before they will go there. Change will be necessarily slow. The market sector will continue to play an important part in community economies, and in time it will grow in importance. Aboriginal people will develop the skills to manage and thrive in the private sector, so providing role models for those following.

Many community leaders are torn between the need to create economic opportunities for the next generations and the desire to retain traditional values and knowledge. Opportunities for economic development that involve customary activities are rare, but where they have arisen there have been some spectacular successes. The production of traditional art and craft objects generates substantial income for many remote communities: often the only externally sourced private income in the community. A commercially successful fire abatement project in western Arnhem Land is an extension of customary land management practises. The numerous marine ranger programs incorporate customary land and sea management practises with other forms of coastal ecosystem monitoring and protection.

Many Aboriginal people aspire to involvement in the customary sector. There is rarely a shortage of candidates willing to participate in hunting, fishing, food gathering, looking after country, looking after coastal waters, art and craft production and other traditional pursuits. Perhaps the customary

sector should more often be the vehicle for economic development, rather than projects that simply aim to grow the market sector.

Appendix II Guiding principles for ongoing engagement developed by the NTG

1. Ecological sustainability of fisheries across the NT.
2. Continued commercial fishing at an optimum level.
3. Continued recreational fishing (including by tourists)
4. Substantive /Substantial Indigenous involvement in fishing
5. Single/Seamless/Simple regulatory framework – One stop shop no recreational licence for any area, plus single enforcement regime, and stakeholder certainty and security of access.
6. Real Indigenous involvement in management of fisheries
7. Maximise economic and regional development through fishing

Appendix III Draft Indigenous Fisheries Framework to Support a Negotiated Outcome – Possible Elements Developed by the NTG

The High Court decision on the Blue Mud Bay matter determined that Government licences and permits to fish do not give the people who hold them any permission to go onto Aboriginal land. The Court said that water overlying Aboriginal land should not be treated any differently to the land itself and that the Territory *Fisheries Act* still applies in these waters.

Given the High Court decision, the following draft negotiating position is proposed to support a practical negotiated outcome:

Access to waters

- Continued free access (no individual permits or permit fees) to waters overlying Aboriginal land for commercial fishers, recreational fishers, and other persons/activities (such as commercial and recreational boating and shipping, access to and from adjoining land, etc)
- Arrangements for access will need to be enduring and provide certainty

Economic/Regional Development

- Provide a commercial asset base to Indigenous people [ownership of fisheries “assets” or direct involvement in industry through a market based process]
- Possible “new” or enhanced licences for Indigenous sector [eg. fish traps, revision of Aboriginal coastal net] [subject to sustainability considerations]
- Enterprise support [e.g. land-based camps for recreational fishers, fishing tourism, aquaculture] – refer below
- Opportunities for access through Aboriginal lands for the benefit of land owners and fishers.

Enterprise Support and Capacity Building

- • Training, business support, capacity building etc to support economic development initiatives
- • More refined development of a Code of Conduct for NT guided fishing tour operators, commercial fishers and recreational fishers.

Involvement in Fisheries Management

- Inclusion in fisheries advisory processes
- Possible establishment of Indigenous peak body
- Enhanced role for marine rangers
- Capacity building and training in fisheries management
- Support for monitoring and assessment on “priority” areas or species

Traditional Fishing

- Recognise role of Indigenous people in managing sea country
- Recognise difference between traditional fishing, recreational fishing and commercial fishing