

SECTION 2: PARTICIPATING IN FISHERIES MANAGEMENT

Commonwealth Policies and Inquiry Recommendations

The 1986 Law Reform Commission *Report on the Recognition of Aboriginal Customary Laws* recommended that there be consultation with affected Aboriginal communities before conservation restrictions were imposed on customary hunting and fishing activities.

At both State and Federal level, legislation should be amended to require consultation with Aboriginal people affected where steps are to be taken to restrict traditional hunting and fishing, to ensure that views of those Aborigines affected are taken into account in reaching any decision on the management of resources.¹³¹

It also stated:

There is no general formula for Aboriginal control in the management of scarce resources. The responsibility of governments to legislate for conservation of resources does not exclude the role of Aborigines in conservation and management; this is especially so on Aboriginal land. Boards of management should be entrusted with the management of Aboriginal land, including the power to regulate its use. There is no reason why Aboriginal local councils should not...be able to make by-laws regarding hunting and fishing on Aboriginal land; though it may be that this power should be limited to by-laws which are more restrictive than those passed by the responsible State or Federal Government.¹³²

In 1991, John Cordell's consultancy report for the ESD Fisheries Working Group, entitled *Managing Sea-Country: Tenure and Sustainability of Aboriginal and Torres Strait Islander Marine Resources*, recommended that:

- measures should be taken to increase directly indigenous community representation and decision-making participation in appropriate fishery management frameworks and advisory committees, particularly in protected areas...
- in conjunction with a sea tenure research agenda, options for developing new management frameworks and instruments should be investigated — such as prospects for integrating a constellation of management activities under indigenous management zones or areas.¹³³

The *Final Report of the Ecologically Sustainable Development Working Group on Fisheries* recommended that Governments:

- integrate the indigenous sector in a national framework for coastal fisheries and marine management;
- investigate new co-management procedures with indigenous communities;
- ...ensure that indigenous communities have membership on management advisory committees of appropriate fisheries.¹³⁴

Also in 1991, the *Report of the Royal Commission into Aboriginal Deaths in Custody* endorsed recommendations submitted to a Conservation and Land Management Meeting at a 1990 conference in Western Australia. That meeting recommended that joint management for national parks be encouraged and, amongst other recommendations, that Aboriginal people be involved in the development of management plans for National Parks; have access to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes, and that Aboriginal people be given preference in employment within National Parks as administrators, rangers, and in other positions within National Parks. Most Governments have endorsed that recommendation (Rec. 315).¹³⁵

¹³¹ The Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, p.202.

¹³² The Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, pp.202-203.

¹³³ Cordell, *Managing Sea Country...*, pp.130-131.

¹³⁴ Commonwealth, *Ecologically Sustainable Development Working Groups, Final Report — Fisheries*, p.154.

¹³⁵ *Aboriginal Deaths in Custody: Response by Governments to the Royal Commission*, Vol.3, Australian Government Publishing Service, Canberra, 1992, pp.1194-1205.

All Governments also supported the Royal Commission recommendation that Governments negotiate with Aboriginal organisations and communities to ensure that the principle of self-determination was inherent in any policy or program that would specifically affect Aboriginal people (Rec. 188). There is a substantial body of literature on both self-determination,¹³⁶ and co-management of natural resources which is relevant to any policy development toward an Aboriginal and Torres Strait Islander Fisheries Strategy.

In 1992 the *National Strategy for Ecologically Sustainable Development* recognised the challenge 'to ensure full participation by Aboriginal and Torres Strait Islander peoples in community progress towards ESD'.¹³⁷ It seeks to ensure that Aboriginal and Torres Strait Islander peoples' land, heritage, economic and cultural development and employment concerns are represented and incorporated in resource allocation decisions, and that relevant consultative arrangements and levels of involvement by Aboriginal and Torres Strait Islander peoples in decision making processes related to ESD are improved.

The Strategy suggests that Governments will:

- encourage greater recognition of Aboriginal and Torres Strait Islander peoples' values, traditional knowledge and resource management practices relevant to ESD;
- seek to increase Aboriginal and Torres Strait Islander involvement in national dispute-resolution arrangements in relation to settlement of land and resource-management concerns; and
- examine the relative representation of Aboriginal and Torres Strait Islander peoples on decision-making or advisory bodies relevant to their interests in resource allocation or ESD-related issues.¹³⁸

The consultancy report prepared by Altman, Ginn, Smith and Roach for the 1993 Resource Assessment Commission (RAC) *Coastal Zone Inquiry* was particularly concerned with management participation issues for indigenous Australians in the coastal zone. It concluded that in light of the High Court's recognition of native title, that government authorities and developers should seek to engage indigenous Australians in joint management of coastal areas, as 'the weight of documentation demonstrates that Aboriginal and Torres Strait Islander systems of land tenure and resource utilisation extend to coastlines and adjacent seas, reefs and islands...[and] continue in many contemporary contexts'.¹³⁹ It suggested that cultural knowledge could 'be used by indigenous groups as a lever to increase their input into development and management processes'.¹⁴⁰ It suggested that negotiation rather than consultation, and participation in advisory structures, might be an effective mechanism for protecting indigenous Australians' interests, but that prerequisites to effective participation and representation included 'obtaining statutory recognition of their management rights, mandatory involvement in institutional decision-making and overcoming inadequate information flow and lack of financial resources'.¹⁴¹ It suggested that regional councils of the Aboriginal and Torres Strait Islander

¹³⁶ House of Representatives Standing Committee on Aboriginal Affairs, *Our Future, Our Selves: Aboriginal and Torres Strait Islander Community Control, Management and Resources*, Commonwealth, Canberra, 1990; C. Fletcher (ed.), *Aboriginal Self-Determination in Australia*, Australian Institute of Aboriginal and Torres Strait Islander Affairs Report Series, Aboriginal Studies Press, Canberra, 1994; M. Limerick, *Alternative Governing Structures: Discussion Paper and Resource Document*, unpub. Office of Aboriginal and Torres Strait Islander Affairs, Brisbane, 1994; Queensland, Legislation Review Committee, *Inquiry into the Legislation Relating to the Management of Aboriginal and Torres Strait Islander Communities in Queensland: Final Report*, Dept. Family Services and Aboriginal and Islander Affairs, Brisbane, 1991; J. Wolfe, *Lessons in Regional Planning and Development from Canada and Australia*, Australian National University North Australia Research Unit, *Discussion Paper No.17*, June 1993; J. Wolfe, *Regional Planning by ATSIC Councils: Purpose, Process, Product & Problems*, Australian National University North Australia Research Unit, *Discussion Paper No.18*, June 1993; J. Wolfe, *The ATSIC Aboriginal Community Development Planning Program in Northern Australia: Approaches and Agendas*, Australian National University North Australia Research Unit, *Discussion Paper No.16*, May 1993; J. Wolfe, *Who's Planning, Whose Plans? The DEET-ATSIC Aboriginal Community Development Planning Pilot Scheme*, Australian National University North Australia Research Unit, *Discussion Paper No.15*, May 1993.

¹³⁷ Commonwealth, *National Strategy for Ecologically Sustainable Development*, p.82.

¹³⁸ Commonwealth, *National Strategy for Ecologically Sustainable Development*, pp.82-83.

¹³⁹ Altman, Ginn, Smith and Roach, *Existing and Potential Mechanisms...*, p.62.

¹⁴⁰ Altman, Ginn, Smith and Roach, *Existing and Potential Mechanism...*, p.62.

¹⁴¹ Altman, Ginn, Smith and Roach, *Existing and Potential Mechanisms...*, p.64. See also House of Representatives Standing Committee on Aboriginal Affairs, *Our Future, Our Selves: Aboriginal and Torres Strait Islander*

Commission (ATSIC) could be encouraged to address coastal management issues within regional planning processes.¹⁴² The report endorsed the Kowanyama example of community-based management as an 'optimistic option', as were strategies being developed in the Torres Strait.¹⁴³

In 1993 the RAC Coastal Zone Inquiry Indigenous Reference Group recommended the enactment of Commonwealth legislation which:

- provides mechanisms to ensure substantive indigenous peoples' involvement in, and wherever possible control of, the management of their traditional environments and resources;
- ensures that such environments and resources are managed in such a way as to enable continued access and use by indigenous people.¹⁴⁴

The Commonwealth Coastal Policy (1995) states:

The Commonwealth Government will promote the appointment of indigenous people to boards and authorities concerned with environmental and resource management affecting the coastal zone. The boards and authorities will also be required to take account of indigenous interests in developing their policies and programs.

The Commonwealth Government will encourage, through the Australian and New Zealand Environment and Conservation Council, the development of management arrangements by other spheres of government that ensure substantive participation of Aboriginal and Torres Strait Islander people in the management of coastal resources, including joint management of conservation areas.¹⁴⁵

The 1996 *National Strategy for the Conservation of Australia's Biological Diversity* has been agreed to by the Commonwealth Government and the State and Territory Governments in Australia. The strategy recognises the value of Aboriginal and Torres Strait Islander peoples' ethnobiological knowledge and it encourages its use in biological diversity research and conservation programs. Recommended actions to facilitate this include provision of information, informed consent and equitable benefit-sharing, species recovery plans, cooperative arrangements, sustainable harvesting of wildlife, and community education.¹⁴⁶ The strategy states:

Traditional Aboriginal and Torres Strait Islander management practices have proved important for the maintenance of biological diversity and their integration into current management programs should be pursued where appropriate.

The maintenance of biological diversity on lands and waters over which Aboriginal and Torres Strait Islander peoples have title or in which they have an interest is a cornerstone of the well-being, identity, cultural heritage and economy of Aboriginal and Torres Strait Islander communities.¹⁴⁷

Regional Agreements

Regional agreements are being promoted increasingly by indigenous peoples' organisations, the national native title tribunal, and commentators¹⁴⁸ as a potential mechanism for achieving a range of policy objectives.

Community Control, Management and Resources, Commonwealth, Canberra, 1990.

¹⁴² Altman, Ginn, Smith and Roach, *Existing and Potential Mechanisms ...*, p.69.

¹⁴³ Altman, Ginn, Smith and Roach, *Existing and Potential Mechanisms ...*, p.70.

¹⁴⁴ Smyth, *A Voice in All Places...*, p.221.

¹⁴⁵ Dept. of the Environment, Sport and Territories, 'Living on the Coast', p.31.

¹⁴⁶ Dept. of the Environment, Sport and Territories, *The National Strategy for the Conservation of Australia's Biological Diversity*, Canberra, 1996, pp.14-15.

¹⁴⁷ *National Strategy for the Conservation of Australia's Biological Diversity*, p.14.

¹⁴⁸ See for example, R.S. French, 'Discussion Paper on a Process for Reaching Agreements About Future Developments on Native Title Land and the Possibility of Regional Framework Agreements', Paper presented at the Indigenous Land Use Conference, Darwin, September, 1995, pp.1-12; R. S. French, 'Regional Agreements and the Native Title Act 1993: Paper presented at the ATSIC Regional Agreements Seminar, Cairns, 29-31 May 1995', pp.1-18; A. Harris (ed.), *A Good Idea Waiting to Happen: Regional Agreements in Australia. Proceedings from the Cairns Workshop July 1994*, Cape York Land Council, Cairns, 1995; P. Jull, 'The Concept of Regional Agreements and Torres Strait: A Resource Paper Prepared for the Island Coordinating Council (ICC) of Torres

Regional agreements can address participation in the management of natural and cultural resources, access and usage rights and strategic and operational directions, for example. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, has argued that regional agreements are one mechanism for achieving social justice for indigenous Australians. He has suggested that regional agreements could include any (or all) of the following topics:

- settlement of native title claims under the *Native Title Act 1993 (Cwlth)* and non-native title claims outside the Act;
- legislative reforms to over-ride inconsistent State and Federal laws;
- to create new institutions and processes which give Indigenous peoples a legal and practical right to participate in planning, development control, environmental and social impact assessment, resource allocation policies and decisions for an area which is considerably larger than that which they own;
- to provide for Aboriginal control or co-management over their land, sea, natural resources and wildlife;
- to ensure Aboriginal control or co-management of national parks, conservation and world heritage issues; and
- participation in resource development and other economic initiatives; to provide the framework for Indigenous enterprises and joint ventures.¹⁴⁹

As part of a social justice strategy, Commissioner Dodson recommended that the Commonwealth Government fund trial projects in at least four regions (in northern and southern Australia), where communities resolve to pursue negotiated settlements on a regional basis. Following those trial projects, he suggested that indigenous organisations be funded to negotiate Agreements-in-Principle, and be provided with interest free loans for the finalisation of agreements.¹⁵⁰

The *Native Title Act 1993 (Cwlth)* provides mechanisms for negotiated agreements regarding native title. For example, section 21 provides that native title holders may, under an agreement with the Commonwealth, State or a Territory, surrender their native title rights and interests in relation to 'land'¹⁵¹ or 'waters',¹⁵² or authorise future acts which may affect their native title, including on a regional and local basis. Under s.227 'an act 'affects' native title if it extinguishes the native title rights and interests or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise'. Regional agreements can also be made conditional, and can involve the payment of lawful consideration.

In September 1995 the National Native Title Tribunal, the Council for Aboriginal Reconciliation and the Aboriginal and Torres Strait Islander Commission jointly convened an international conference in Darwin - the Indigenous Land Use Agreements Conference. Presentations addressed co-management of living resources and workshops were intended to produce model forms of agreement or to identify key issues for resolution. Parks

Strait', *Unpub.*, 1995, pp.1-32; C. Wickliffe, 'The Co-Management of Living Resources and Maori Customary Fishing Rights, Paper presented at the Indigenous Land Use Agreements Conference, Darwin, September 26-29, 1995', 1995, pp.1-39; R. S. French, 'Pathways to Agreement', Paper presented at the Indigenous Land Use Agreements Conference, Darwin 26-29 September 1995, pp.1-24; Richardson, Craig, Boer, 'Indigenous Peoples and Environmental Management: A Review of Canadian Regional Agreements and their Potential Application to Australia ...', [Parts 1 and 2].'

¹⁴⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Social Justice: Strategies and Recommendations: Submission to the Parliament of the Commonwealth of Australia on the Social Justice Package: Vol.1: Strategies and Recommendations*, Sydney, 1995, pp.26-27.

¹⁵⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Social Justice: Strategies and Recommendations...*, pp.29-30.

¹⁵¹ 'Land' is defined to include the airspace over, or subsoil under, land, but does not include waters: s.253 *Native Title Act 1993 (Cwlth)*.

¹⁵² 'Waters' is defined to include: '(a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or (b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph (a)): s.253. An amendment has been proposed by the Federal Government to the Act to make it clear that 'waters' will include the area between high and low water marks: Dept of the Prime Minister and Cabinet and Attorney-General's Dept, 'Outline of Proposed Amendments to the Native Title Act 1993', *Typescript copy*, 1995, p.14.

and reserves, and sea claims (including fisheries, pearl producing, recreational access) were addressed in two workshops. This conference followed closely after the 1995 Ecopolitics Conference which had indigenous peoples and land management as a theme. It may be possible for conservation agencies and native title holders in protected areas to negotiate cooperative management agreements under native title legislation, whether the application for a determination of native title is made by a claimant or a non-claimant.

If native title is recognised in law, it would also be possible for ANCA to enter into cooperative management arrangements regarding that land, under Section 18 of the *National Parks and Wildlife Conservation Act*, as native title holders can enter into agree to future acts which may affect their native title, as discussed above.

In February 1996 an initial step towards the conclusion of a regional agreement under s.21 of the *Native Title Act 1993 (Cwlth)* was taken in Cape York Peninsula. A head of agreement was endorsed by the Cape York Land Council (CYLC) and the Peninsula Regional Council of the Aboriginal and Torres Strait Islander Commission (ATSIC), (representing traditional Aboriginal owners on Cape York Peninsula), the Cattlemen's Union of Australia Inc. (CU), (representing pastoralists on Cape York Peninsula), and the Australian Conservation Foundation (ACF) and The Wilderness Society (TWS), (representing environmental interests in land use on Cape York Peninsula). The heads of agreement recognised the interests of Aboriginal people and pastoral landholders in the region; that there are areas of significant conservation and heritage value in the region; that all parties are committed to work together to develop a management regime for ecologically, economically, socially and culturally sustainable land use on Cape York Peninsula (including a continuing cattle industry), and to develop harmonious relationships amongst all interests in the area. It was also agreed that Aboriginal people may exercise native title rights in a way that will not interfere with the rights of pastoralists, while pastoralists agreed to continuing rights of access for traditional owners to pastoral properties for traditional purposes. It was also agreed that a code of conduct would be developed to guide relations between pastoralists and Aboriginal people in the Cape.¹⁵³

Regional agreements can also be an integral part of bioregional planning.¹⁵⁴ Regional planning, strategies and agreements for indigenous Australians fall within the ambit of the *Aboriginal and Torres Strait Islander Commission Act 1989 (Cwlth)*, the *Native Title Act 1993 (Cwlth)*, and the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995 (Cwlth)*.

An example of regional planning relevant to Aboriginal and Torres Strait Islander peoples and fisheries management has occurred in the Torres Strait, where a marine strategy for a more community-based, comprehensive and cross-sectoral approach to the management of the environment and resources of the Torres Strait region, 'consistent with the needs of indigenous Torres Strait Islanders, ecologically sustainable development, and minimal environmental disturbance' has been developed.¹⁵⁵ The Island Coordinating Council (ICC)¹⁵⁶ proposed the concept of a marine strategy in 1991, and received funding for it under the Commonwealth's Ocean Rescue 2000 program. Drawing on Ocean Rescue 2000 funds, plus support from the Australia Nature Conservation Agency (CEPANCRM Program) and the Queensland Department of Family Services and Aboriginal and Islander Affairs, the Island Coordinating Council and others developed a Marine Strategy for Torres Strait (MaSTS). The strategy recognises the centrality of local decision-making, so as to 'provide the foundation for future public policy and economic development in the Torres Strait region'.

The Marine Strategy for the Torres Strait (MaSTS) is founded on a number of principles. The Strategy recognises the limited resource base of the region; recognises Torres Strait Islanders' fundamental rights to participate in the conservation, sustainable use and management of the environment and its resources; seeks to

¹⁵³ J. Downey, N. Pearson, J. Purcell, G. Sargent, et al., *Media Release: Historic Land Agreement, Cape York Peninsula*, The Cape York Land Council, The Cattlemen's Union of Australia, The Australian Conservation Foundation, The Wilderness Society, The Peninsula Regional Council of ATSIC, 1996.

¹⁵⁴ See generally: H. Fourmile, *Making Things Work: Aboriginal and Torres Strait Islander Involvement in Bioregional Planning: Draft Consultant's Report* for the Department of Environment, Sport and Territories, Canberra, (forthcoming).

¹⁵⁵ M. Mulrennan and N. Hanssen, with the Island Coordinating Council, *Marine Strategy for Torres Strait: Policy Directions*, Australian National University North Australia Research Unit and the Torres Strait Island Coordinating Council, Darwin, 1994, p.10.

¹⁵⁶ The ICC comprises the elected council chairpersons of each of the deed of grant in trust communities under the *Community Services (Torres Strait) Act 1984 (Qld)*.

respect ‘traditional ecological knowledge’ and reflect that knowledge in management arrangements, and it also advocates an holistic and integrated approach to the management of the region. The MaSTS coordinator, Geoff Dews, has described some of MaSTS’ aims as follows:

- to develop locally based arrangements to coordinate the use of marine resources;
- to develop environmental planning and management;
- to develop practical solutions to local problems; and
- to investigate issues relating to the Torres Strait Protected Zone and the Torres Strait Treaty; and to reconcile the differences between technical and cultural and traditional management concepts.¹⁵⁷

The MaSTS principles support a comprehensive approach to resource and environmental management and recognise that a ‘healthy and productive marine environment is the key to Torres Strait Islander well-being and future prospects, and must be managed as such’.¹⁵⁸ The Strategy will be implemented through a series of action plans which derive from broader identified strategies. Some of these actions are:

- to ‘serve the legal and political definition of customary marine tenure’;¹⁵⁹
- to integrate traditional and scientific knowledge in ongoing research;¹⁶⁰
- to recognise indigenous Islander rights in relation to Torres Strait Treaty review, fisheries agreements, ‘native title’;¹⁶¹
- to further the development of ‘a Regional Environment and Resource Management Plan [and]... a series of Community Environment and Resource Management Plans’;¹⁶²
- to ‘ensure that socio-economic development strategies for the Torres Strait are consistent with the Marine Strategy’;¹⁶³
- to reduce land and marine pollution risks; develop and implement Islander policies on regional mineral and petroleum resources;¹⁶⁴
- to improve existing environmental impact procedures;¹⁶⁵
- to promote MaSTS to others;¹⁶⁶
- to meet international obligations;¹⁶⁷
- to ‘encourage cooperative management of shared stocks of fish and mammals between PNG, Indonesia and Australia’; and
- to ‘encourage comparative studies and exchanges with other ‘first world’ countries regarding issues of common interest’.¹⁶⁸

Consistent with the MaSTS strategy, community-based, comprehensive environmental resource management strategies are being developed on many of the Islands in the Strait. Two are complete, a third is close to

¹⁵⁷ Aboriginal and Torres Strait Islander Programs Section and Reserve Systems Unit, *Draft Minutes from Working Group Meeting, Alice Springs, 13-16 June, 1995*, ANCA, unpub., pp.30-31.

¹⁵⁸ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.67.

¹⁵⁹ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.69.

¹⁶⁰ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.69.

¹⁶¹ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.70.

¹⁶² Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.72.

¹⁶³ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.73.

¹⁶⁴ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.73.

¹⁶⁵ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.76.

¹⁶⁶ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.77.

¹⁶⁷ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.78.

¹⁶⁸ Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*, p.78.

completion and another five are more than two-thirds complete.¹⁶⁹ The Field Assistant to MaSTS and the President of the Torres Strait Islander Commercial Fishermen's Association, Joe David, has been assisting with the development of the plans and has reported that the most important issues raised by the communities involved were commercial and recreational fisheries; heavy reliance upon seafood and the subsequent concerns regarding marine pollution and overfishing.¹⁷⁰

Relevant Federal Legislation

The *Fisheries Administration Act 1991 (Cwlth)* establishes:

- the Australian Fisheries Management Authority (AFMA) 'with functions and responsibilities relating to the management of fisheries on behalf of the Commonwealth'; and
- the Fishing Industry Policy Council 'with a view to ensuring the participation by persons engaged in, or having an interest in, the fishing industry in the process of formulating government policy in relation to the management of fisheries': s.3.

Under the Act, AFMA may consult with persons or bodies representative of the whole or a part of the industry, recreational fishing, the Commonwealth Government, State or Territory Governments, Commonwealth and State/Territory fisheries authorities, and persons having a particular interest in matters associated with the industry (including members of the scientific community): s.9. AFMA may establish management advisory committees for particular fisheries: s.56; and also advisory committees other than management advisory committees: ss.54, 55.

The powers of management advisory committees (MACs) are quite broad. MACs must act in accordance with policies determined by, and any directions given by, the Authority: s.59. MACs have power to do, on behalf of the Authority, all things necessary or convenient to be done for or in connection with the performance of its functions: s.58. MACs are to comprise the Chairperson; the Authority officer responsible for the management of MAC fishery, and up to seven other members who are considered to have an interest in matters in relation to which the committee is established: s.60. When appointing members to MACs, AFMA must try to ensure that the MAC 'includes an appropriate number of members engaged in, or with experience in, the industry in the fishery in relation to which the management advisory committee is established': s.62. Most MAC members are scientific or industry members, and there are no identified indigenous Australian members of MACs.¹⁷¹

The *Fisheries Administration Act 1991 (Cwlth)* also provides for a Fishing Industry Policy Council which has the objectives of:

- facilitating an exchange of views between persons having an interest in the industry on matters affecting the industry; and
- developing a unified approach to matters affecting the industry: s.97.

The functions of the council include:

- inquiring into and reporting to the Minister on matters affecting the industry, of its own motion or when referred by the Minister;
- developing for Ministerial consideration proposed measures to safeguard or further the interests of the industry consistent with the principles of ecologically sustainable development; and
- to consult and co-operate with persons and organisations in matters affecting the industry, amongst other functions: s.98.

¹⁶⁹ Geoff Dews, Marine Strategy Coordinator, Island Coordinating Council, Torres Strait, personal communication, 4 October 1995. See: T. Leary and J. David, *Coconut (Poruma) Community Environment and Resource Management Plan*, Island Co-ordinating Council, Torres Strait, 1994; T. Leary, and J. David, *Saibai Community Environment and Resource Management Plan*, Island Co-ordinating Council, Torres Strait, 1994.

¹⁷⁰ Aboriginal and Torres Strait Islander Programs Section and Reserve Systems Unit, *Draft Minutes from Working Group Meeting, Alice Springs, 13-16 June, 1995*, ANCA, unpub., p.31.

¹⁷¹ See Appendix 6: Members of Management Advisory Committees as at 30 June 1994, Australian Fisheries Management Authority, *Annual Report 1993-94*, Australian Fisheries Management Authority, Canberra, 1994, pp.114-6.

The Northern Prawn Fishery (NPF) is managed under Federal legislation, and it extends from the Cape York Peninsula in Queensland to Cape Londonderry in Western Australia. The Management Advisory Committee for the NPF, which lies adjacent to considerable Aboriginal-owned land in the Northern Territory, and near significant Aboriginal and Torres Strait Islander communities, does not include indigenous representatives, although it does include members from industry, State Government, the scientific community and the AFMA.¹⁷² The Acting Managing Director of the AFMA, Frank Meere, has written that AFMA's approach to indigenous issues is that 'many of the problems can be addressed by taking the time to consult with those concerned and working out what the real difficulties are and how they can be addressed so that commercial and traditional interests can coexist in harmony'. Further:

In relation to the Northern Prawn Fishery, which covers waters extending from Cape Londonderry in the West to Cape York in the East the following has occurred:

- a section is incorporated in the annual Northern Prawn Fishery information booklet disseminated to all operators relating to access to Aboriginal owned land and closed seas;
- periodic consultative meetings are held between Commonwealth and State fisheries managers and the Anindilyakwa Land Council (based on Groote Eylandt) to exchange information and discuss issues impacting on users of resources in the region;
- invitations have been extended to and accepted by aboriginal groups to attend the Northern Prawn Fishery Management Advisory Committee (NORMAC) meetings;
- all Land Council and ATSIC offices in the northern region were provided with information packages relating to the development of the Northern Prawn Fishery Management Plan 1995 and given opportunities to comment in the development phase as well as through the normal public consultation channels.¹⁷³

AFMA also administers the *Torres Strait Fisheries Act 1984 (Cwlth)* on behalf of the Protected Zone Joint Authority. In the Torres Strait there are a range of management structures and participatory mechanisms for local and regional resource management. The consultative/advisory structure is intended to recognise the importance of 'protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders...' consistent with the Torres Strait Treaty.¹⁷⁴

The Protected Zone Joint Authority (PZJA) comprises the Commonwealth Minister for Resources (Chair) and the Queensland Minister for Primary Industries. The PZJA is to seek the views of traditional inhabitants where it considers it appropriate to do so where a matter may affect traditional inhabitants' interests: s.39. The *Torres Strait Fisheries Act 1984 (Cwlth)* also provides that the Minister shall seek the views of the Joint Advisory Council established under Article 19 of the Treaty when considering matters which may affect the interests of 'traditional inhabitants', if he considers it appropriate: s.13. The eighteen member Council is required to include at least three members representing traditional inhabitants from Australia and Papua New Guinea, unless otherwise agreed. The Joint Advisory Council's functions include:

- seeking solutions to problems arising at the local level which are not resolved by liaison;
- considering and making recommendations on developments or proposals which might affect the protection of the traditional way of life and livelihood of the traditional inhabitants, their free movement, performance of traditional activities and exercise of traditional customary rights as provided for in the Torres Strait Treaty; and
- ensuring that traditional inhabitants are consulted and are given full and timely opportunity to comment on matters of concern to them and that their views are conveyed to the Treaty parties in any reports and recommendations made by the Council to those parties and to Foreign Ministers: Art. 19 of the Treaty.

The Protected Zone Joint Authority is advised by a Torres Strait Fisheries Management Committee (TSFMC). Torres Strait Islanders are in a minority on that committee, which has the following membership: two representatives of the Commonwealth Government, two representatives of the Queensland Government, three

¹⁷² M. Exel, 'Australian fisheries management — resource allocation and traditional rights', *Australian Fisheries*, Vol.53, No.5, 1994, pp.15-19.

¹⁷³ Personal communication, 6 October 1995.

¹⁷⁴ M. Elmer and R. Coles, 'Torres Strait Fisheries Management', in Lawrence and Cansfield-Smith (eds), *Sustainable Development for Traditional Inhabitants...*, pp.283-293 at p.287.

representatives of the Queensland Commercial Fishermen's Organisation; three representatives of the Island Co-ordinating Council and a member representing the Torres Strait Fisheries Scientific Advisory Committee.

The Torres Strait Fishing Industry and Islanders Consultative Committee (TSFIICC) advises the TSFMC. It comprises two representatives of the Commonwealth Government; two representatives of the Queensland Government; seven representatives of the Queensland Commercial Fishermen's Organisation; seven representatives of the Island Co-ordinating Council and one representative of the Torres Strait Fisheries Scientific Advisory Committee. There are also five working groups: prawn, pearl shell, tropical rock lobster, Spanish mackerel and licensing.¹⁷⁵

During 1993-4 the Protected Zone Joint Authority agreed to:

- expand the membership of the TSFIICC to include a nominee from the Torres Strait Fishermen's Association (TSFA);
- expand the membership of the TSFSAC from five to eight to include one representative each from industry and Islanders (Queensland Commercial Fishermen's Organisation (QCFO) and Island Co-ordinating Council (ICC) respectively to nominate these representatives) and a manager or economist from AFMA; and
- restructure the mackerel, pearl shell and tropical rock lobster fishery working groups such that the three industry representatives be nominees from each of the ICC, TSFA and QCFO (the same person could be the nominee for more than one working group) and noted that the Prawn Working Group membership continue unaltered.¹⁷⁶

The *Great Barrier Reef Marine Park Act 1975 (Cwlth)* is the leading management Act for marine parks in Australia regarding the potential for indigenous Australians' involvement in management, although the Great Barrier Reef Marine Park Authority (GBRMPA) has worked with the multiple users of the park since its creation. Representation on the Great Barrier Reef Marine Park Authority for Aboriginal communities adjacent to the Park and provision for joint management agreements are two features of recent amending Federal legislation. One of the four members of the Great Barrier Reef Marine Park Authority is to be 'a member appointed to represent the interests of the Aboriginal communities adjacent to the Marine Park'.¹⁷⁷

Smyth has traced the changes within Park management which recognise indigenous Australians' interests, as follows:

- appointment of an Aboriginal person to the Great Barrier Reef Marine Park Consultative Committee from 1988 onwards;
- appointment to the GBRMPA staff of a full time Aboriginal Liaison Officer in 1992;
- adoption of legally binding marine park regulations (Regulations 13AC(4)(b) and 13AC(5)) relating to, respectively, the protection of cultural and heritage values in the marine park and criteria for assessing applications to engage in traditional fishing, hunting and gathering activities;
- support for Aboriginal Community Ranger training, through participation of GBRMPA staff in delivering training modules;
- part time employment by the GBRMPA of Community Rangers on four communities, including Hopevale, and Lockhart River on Cape York Peninsula, to assist in local marine park management and monitoring of dugong and turtle catches;
- development and adoption of a 25 Year Strategic Plan for the Great Barrier Reef World Heritage Area in which Aboriginal interests are substantively recognised; and

¹⁷⁵ Torres Strait Protected Zone Joint Authority, *Annual Report 1 July 1993 to 30 June 1994*, Australian Fisheries Management Authority, 1994, pp.9, 42-43.

¹⁷⁶ Torres Strait Protected Zone Joint Authority, *Annual Report*. Recommended changes to the PZJA consultative and advisory structures which were made by an inter-departmental committee addressing a fisheries dispute in the Strait were not accepted for implementation: S. Ellims, C. McGregor, B. Turner, G. Mye, et al., *Report of the Committee on Fishing in the Eastern Islands of the Torres Strait*, Typescript Copy, Dept. Prime Minister and Cabinet, 1994.

¹⁷⁷ See the *Environment, Sport and Territories Legislation Amendment Act 1995 (No.25/95) (Cwlth)* which was assented to and commenced operation in April 1995.

- commitment by the GBRMPA to a process of joint planning with Aboriginal and Torres Strait Islander peoples of the Far Northern Section of the marine park with a view to establishing joint management arrangements in all or parts of the Section.¹⁷⁸

Joint management possibilities for the park were put on a legislative footing in 1995, although the Authority already had in place some co-management arrangements concerning the administration of its permit system for indigenous communities with both native title and historic associations. These arrangements involved the formation of Councils of Elders and some delegated authority.¹⁷⁹ The 1995 amendments to the *Great Barrier Reef Marine Park Act 1975 (Cwlth)* provided that ‘The Authority may enter into an agreement or arrangement ... with a group of people who are representative of a community group that has a special interest in an area of the Marine Park’: s.39ZA.(1).¹⁸⁰ The agreement or arrangement may relate to the development and/or implementation of a plan of management for a species or ecological community, and may provide for joint management with the Authority in accordance with the plan: s.39ZA.(2). The interests of native title holders, and the interests of others who have ‘some other special identification with the area or its resources’ are recognised in the Act as special interests for the purposes of park management plans: s.39V.(1).

The GBRMPA is able to prepare management plans for one or more areas, species or ecological communities in the park: s.39X. The Authority must notify the public that management plans are to be prepared and invite submissions, and those submissions must be taken into account: s.39ZE. The interests of native title holders, and the interests of others who have ‘some other special identification with the area or its resources’ are recognised in the Act as special interests for the purposes of park management plans. The Authority must notify the public that management plans are to be prepared and invite submissions, and those submissions must be taken into account. The Authority has been progressing towards the development of joint management arrangements for the Far Northern Section, the Cairns offshore area, Low Isles, the Whitsunday region and Shoalwater Bay.¹⁸¹

The GBRMPA has recognised Aboriginal and Torres Strait Islander peoples’ interests in its Strategic Plan, Corporate Plan, Turtle and Dugong Management Strategy, and in consultative and advisory committees and zoning plans. Non-statutory regional advisory committees have also been formed ‘from Bundaberg North to Cooktown’, comprising representatives of Aboriginal and Torres Strait Islander, tourism, commercial fishing and local government stakeholders, and these committees contribute to planning and discuss *ad hoc* issues as they arise.¹⁸²

The GBRMPA’s *Strategic Plan for the Great Barrier Reef World Heritage Area* and its *Corporate Plan 1994-1999*¹⁸³ provide goals and strategies relevant to the recognition of Aboriginal and Torres Strait Islander peoples’ interests in the management of the Park. The Strategic Plan did not address the implications of the High Court’s 1992 native title decision, and when the Strategic Plan was released Aboriginal and Torres Strait Islander groups declined to endorse the plan.¹⁸⁴ The plan does recognise Aboriginal and Torres Strait Islander peoples’ interests however, and it includes as a 25-year objective:

To have a community which recognises the interests of Aboriginals and Torres Strait Islanders so that they can pursue their own lifestyle and culture, and exercise responsibility for issues, areas of land and sea, and

¹⁷⁸ Smyth, ‘Indigenous Peoples and the Marine Environment...’, pp.20-21.

¹⁷⁹ C. Cook, ‘Aboriginal and Torres Strait Islander Traditional Hunting and Native Title’, *Reef Research*, June 1994, pp.6-8.

¹⁸⁰ *Environment, Sport and Territories Legislation Amendment Act 1995 (Cwlth)*.

¹⁸¹ Great Barrier Reef Marine Park Authority, *Annual Report: 1994-1995*, Great Barrier Reef Marine Park Authority, Townsville, 1995, p.11.

¹⁸² C. Cook, personal communication, 13 October, 1995.

¹⁸³ Great Barrier Reef Marine Park Authority, *Corporate Plan 1994-1999*, with specific one year objectives 1994-1995, Typescript copy, Townsville, 1994.

¹⁸⁴ Great Barrier Reef World Heritage Area Strategic Planning Team, *The Great Barrier Reef: Keeping It Great: A 25 Year Strategic Plan for the Great Barrier Reef World Heritage Area, 1994-2019*, Great Barrier Reef Marine Park Authority, Townsville, 1994, p.11.

resources relevant to their heritage within the bounds of ecologically sustainable use and consistent with our obligations under the World Heritage Convention and other Commonwealth and State laws.¹⁸⁵

The Strategic Plan also identifies a range of broad and more particular strategies and 5-year objectives towards the recognition of Aboriginal and Torres Strait Islander peoples' interests. The broad strategies address participation in the development of management plans for ecologically sustainable use of traditional resources; responses to the native title decision; participation in decision-making and consultative bodies; access to employment; community education about cultural heritage and aspirations; the development of culturally-appropriate and understandable formats for regulatory and informative material that is distributed to Aboriginal and Torres Strait Islander communities.¹⁸⁶ The Authority's Corporate Plan identifies as its highest priorities: maintaining the ecology of the Great Barrier Reef Marine Park, and providing for reasonable use of the park. In the 'reasonable use' priority area, 'developing cooperative management arrangements with Aboriginals and Torres Strait Islanders' is identified.¹⁸⁷

Outside the GBRMPA area, joint management arrangements for marine parks are also being developed for part of the Cairns Marine Park adjacent to Yarrabah, and consultative arrangements are in place regarding the management of Cobourg Marine Park in the Northern Territory, and regarding Shark Bay Marine Park in Western Australia.¹⁸⁸ Proposals for increased management responsibilities for the customary owners of the Torres Strait and of the areas off Arnhem Land have also been developed,¹⁸⁹ but have not yet been implemented.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwlth)* enables protective declarations to be issued over areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition. The Department of Communications and the Arts is also soon to release Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places which are likely to be of general use in the development of management plans where fishing activities may conflict with places.¹⁹⁰

Under the *Primary Industry Research and Development Act 1989 (Cwlth)* the Fisheries Research and Development Corporation funds industry research. In 1995 the corporation changed its application form to require applicants to identify, amongst other things, the benefits of their research for non-recreational/non-commercial fishing and fisheries, including Aboriginal and Torres Strait Islander fisheries. The Corporation's strategic plan is being developed and it identifies Aboriginal and Torres Strait Islander traditional fishing as a significant sector requiring consideration.¹⁹¹

¹⁸⁵ Great Barrier Reef World Heritage Area Strategic Planning Team, *The Great Barrier Reef: Keeping It Great: A 25 Year Strategic Plan for the Great Barrier Reef World Heritage Area, 1994-2019*, p.35.

¹⁸⁶ Great Barrier Reef World Heritage Area Strategic Planning Team, *The Great Barrier Reef: Keeping It Great: A 25 Year Strategic Plan for the Great Barrier Reef World Heritage Area, 1994-2019*, p.35.

¹⁸⁷ Great Barrier Reef Marine Park Authority, *Corporate Plan 1994-1999 ...*, pp.x, 12-14.

¹⁸⁸ Smyth, *A Voice in All Places*, p.37.

¹⁸⁹ See for example Ginjirrang Mala, *Manbuynga ga Rulyapa (Arafura Sea): an Indigenous Marine Protection Strategy for Manbuynga ga Rulyapa*, Winnellie, 1994 and M. Mulrennan, *Towards a Marine Strategy for Torres Strait (MaSTS)*, Australian National University North Australia Research Unit and the Torres Strait Island Coordinating Council, Darwin, 1993; Mulrennan, Hanssen et. al., *Marine Strategy for Torres Strait...*

¹⁹⁰ Draft Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places, Draft circulated by the (then) Australian Cultural Development Office, Department of Communications and the Arts, Canberra, 1995.

¹⁹¹ Personal communication, Peter Dundas-Smith, Executive Director, Fisheries Research and Development Corporation, 9 October 1995.

Relevant State and Territory Legislation

Tasmania

The *Living Marine Resources Management Act 1995 (Tas)* provides that the Minister may establish advisory committees to provide information and advice to the Minister on matters related to the administration of the Act: s.27. The Minister may appoint ‘any person...on any terms and conditions’: s.27(2), and may abolish an advisory committee at any time. Management plans are provided for in the Act, and the Minister may make rules regarding the making of management plans, including specifying the consultation arrangements to be complied with in relation to the management plan: s.33.

Victoria

Part 6 of the *Fisheries Act 1995 (Vic)* deals with ‘co-management’ of fisheries, which appears to refer to the involvement of the full range of stakeholders and interested parties in the management of fisheries. The Act establishes a Fisheries Co-Management Council (s.90) of up to 11 members appointed by the Governor in Council on the recommendation of the Minister. The Minister is required to consider the need for the members of the Council to hold between them relevant experience and knowledge in the following areas: commercial fishing, fish processing, fish marketing, recreational fishing, traditional fishing uses, aquaculture, conservation and fisheries science: s.90(3)(c). The Minister is also empowered to declare recognised peak bodies of commercial, recreational, aquacultural and conservation interests (s.95). Similar recognition of peak bodies representing indigenous interests is, however, not specified. The Minister must consult with these recognised bodies before making a recommendation for appointment to the Co-Management Council (s.90(3)(d)), or to fisheries committees (discussed below) (s.93(3)(d)).

The functions of the Co-Management Council are to promote the co-management of fisheries; to oversee the preparation of management plans; to advise on state-wide priorities for management and research; and to advise on the operation of the Act, amongst others: s.91. The Council can also develop a draft code of fishing practice, in consultation with others (s.97), for approval by the Minister.

The Act also enables fishery-specific fisheries committees to be established on the recommendation of the Co-Management Council, with each committee consisting of up to nine members who are appointed by the Minister. Members are to be appointed on the basis of experience and knowledge relevant to a particular fishery, and although not specified, this could include knowledge and experience relevant to traditional uses. The functions of a committee are to advise the Co-Management Council on the management of the fishery in respect of which it was appointed, and to advise on the preparation of management plans, amongst others: s.94.

South Australia

The consultative structure for fisheries in South Australia has been reviewed recently, but the resulting report is not yet publicly available.¹⁹² The *Fisheries Act 1982 (SA)* only refers briefly to management committees (s.20), but several integrated management committees have been operating for the past eighteen months, and regulations formally constituting those committees are in draft form. The existing committees do not include Aboriginal representatives, but do include recreational, commercial and non-consumptive (government) representatives.¹⁹³

Western Australia

The *Fish Resources Management Act 1994 (WA)* enables one person of Aboriginal descent, who in the Minister’s opinion represents the interests of Aboriginal people, to be appointed by the Minister to the 14-member Recreational Fishing Advisory Committee: s.33(2)(i). Other members of the committee are the Executive Director ex officio or his or her nominee, and the following Ministerial appointees: 6 persons who represent regional recreational fishing interests; 1 person who represents the recreational fishing media; 1

¹⁹² Don Mackie, Acting Manager, Legislation and Policy, S.A. Fisheries Department, personal communication, 15 September 1995.

¹⁹³ Don Mackie, personal communication, 6 October 1995.

person who represents the fishing tackle industry; 1 nominee of the Western Australian Recreational and Sportfishing Council; 1 person appointed by the Minister on the nomination of the peak industry body; 1 community representative and 1 person who has an interest in recreational fishing but who in the Minister's opinion is independent of the Department and has no commercial interest in recreational fishing: s.33(2) The functions of the committee are to identify issues that affect recreational fishing; and to advise the Minister of issues relating to the management, funding priorities and any other matter relevant to recreational fishing (of its own motion or on request): s.34.

The Act also creates several other advisory committees which need not include Aboriginal or Torres Strait Islander persons. These include:

- the 14-member Rock Lobster Industry Advisory Committee appointed by the Minister. Membership comprises the Executive Director ex officio, an appointee from the Department; 2 nominees of the Rock Lobster and Prawning Association of Australia Inc.; 8 commercial rock lobster fisher persons; 1 recreational rock lobster fisher person; 1 person independent of the Department and the rock lobster industry who has relevant expertise in business management, economics, marketing, fisheries management or fisheries research: s.29; and
- the 7 or 8-member Aquaculture Development Council. Membership includes the Executive Director ex officio or his or her departmental nominee; between 3 and 4 persons appointed by the Minister who have an interest in the aquaculture industry including at least 1 person representing freshwater aquaculture interests; 1 person representing marine aquaculture interests; 1 public servant who is not employed by the Department; 1 person with business or marketing expertise and 1 person who is independent of the Department and the aquaculture industry: s.37. The functions of the Council are to identify issues that affect aquaculture; to advise the Minister on issues relating to aquaculture and its management (of its own motion or on request): s.38.

Other advisory committees can also be created under the Act, and are not required to include Aboriginal persons. These include:

- Fisheries Management Advisory Committees, 'consisting of such persons as the Minister thinks fit', and irrespective of whether a management plan is in force in respect of that fishery: s.41; and
- other advisory committees 'consisting of such persons as the Minister thinks fit, to provide information and advice to the Minister on matters related to the administration of this Act': s.42.

The Policy Officer — Native Title in the Fisheries Department of Western Australia has advised that the Department's approach to involving Aboriginal people in fisheries management has been as follows:

The Department is taking steps to consult with Aboriginal communities and employs a Policy Officer dedicated to native title and indigenous fisheries policy issues. Activities include consultation with Pilbara and Kimberley communities on the new FRMA and discussion of their special fishing requirements, particularly for community and ceremonial purposes. For example, special permits may be a good way to deal with situations where large numbers of fish are needed to feed a traditional gathering.

Aboriginal communities in the Kimberley and the Pilbara were consulted about a proposal to ban set netting north of Beadon Creek, just north of Onslow. Set netting is already banned from Point Cunningham, in King Sound, north to the State border. The majority of Aboriginal people consulted believe that set netting is an undesirable practice which should not continue. The Minister for Fisheries has recently signed a Notice bringing the ban into effect.

Steps are also being taken to involve Aboriginal communities in the Volunteer Fisheries Liaison Officer program which supplements the Department's enforcement and community awareness functions. The Department aims to develop co-operative programs to enhance resource sustainability.¹⁹⁴

Northern Territory

In the *Fisheries Act 1995 (NT)* consultation is required for a range of activities. Advisory committees can be established for management areas and managed fisheries under the Act. Eight statutory advisory committees to assist the Director have either been established or are in the process of being established, as follows:

¹⁹⁴ P. Summerfield, personal communication, 26 September 1995, Ref. 1161/94, p.2.

- Barramundi Fishery Advisory Committee
- Demersal Fishery Advisory Committee
- Timor Reef Fishery Advisory Committee
- Shark Fishery Advisory Committee
- Coastal Line Fishery Advisory Committee
- Spanish Mackerel Fishery Advisory Committee
- Mud Crab Fishery Advisory Committee
- NT Pearling Industry Advisory Committee.

Four non-statutory advisory committees have also been established. In November 1993 the Northern Territory Minister for Primary Industry and Fisheries approved the establishment of the Anindilyakwa Consultative Committee (ACC) for the discussion of fisheries management and related issues in the region. This was sought by the Northern Territory Fishing Industry Council, and was probably partly in response to the Anindilyakwa's aspirations for a sea closure declaration around the Groote Eylandt group of islands.¹⁹⁵ The committee comprises:

- unlimited representatives of the Anindilyakwa speaking people of Groote Eylandt, Bickerton Island and adjacent coastal regions, within an agreed boundary
- 1 representative of the Anindilyakwa Land Council
- 3 representatives of the Dept of Primary Industry and Fisheries (including Chair)
- 3 Fishing Industry Council representatives
- 1 Marine and Fisheries Enforcement (NT Police) representative
- 1 representative of the Australian Fisheries Management Authority.

In June 1995, establishment of the Tiwi Coastal Waters Consultative Committee (TCWCC) was approved by the Northern Territory Minister for Primary Industry and Fisheries, following an initiative by the Northern Territory Fishing Industry Council in 1994. The purpose of the TCWCC is to provide a forum for discussion of fisheries and resource management issues. The committee comprises:

- 6 representatives of the Tiwi Land Council
- 4 representatives of the Department of Primary Industry and Fisheries (including chair and secretary)
- 1 representative of Marine and Fisheries Enforcement (NT Police).

Other non-statutory advisory committees include the Professional Seafood Producers Consultative Committee and the Ministerial Advisory Committee on recreational fishing.¹⁹⁶

The Aboriginal community representatives participating in Commercial Fishing and Aboriginal Interests in the Sea Workshop, in Darwin in August, 1995 agreed to a number of resolutions regarding Aboriginal participation in fisheries management in the Northern Territory. They agreed that:

- they wished to continue working with non-Aboriginal people to look after the sea and sea life and that they strongly encouraged the Department of Primary Industry and Fisheries to continue consultation with coastal Aboriginal communities;
- the Northern Land Council should develop and discuss with the Department of Primary Industry and Fisheries a proposed marine authority which should have a majority of Aboriginal people along with government and industry representation;
- community rangers should be given enforcement powers;
- Batchelor College should include marine and fisheries management, enforcement and education in its ranger training course; and
- the advisory committee proposed by the Department of Primary Industry and Fisheries should consist of two representatives from each of the following regions: Borroloola and Pellew Islands, Numbulwar/Ngukurr,

¹⁹⁵ P. Josif, 'An Overview of Anindilyakwa Aspirations to Manage the Marine Environment Adjacent to their Lands Under Two Laws', in *Turning the Tide...*, pp.21-24.

¹⁹⁶ Pyne, 'The Administration and Management of Fish', p.12.

East Arnhem, West Arnhem, Darwin, Tiwi Islands and Daly River; and one representative from Croker Island and one from Cobourg Peninsula.

It was noted at the workshop that Anindilyakwa did not want to be part of the species management committees at this stage.

The Northern Land Council subsequently submitted a proposal to the Northern Territory Government for the establishment of a marine authority with a majority Aboriginal membership. In considering the proposal, the Government took into account advice from all other interest groups, including commercial and recreational fishers, and matters such as Commonwealth and State arrangements under the Offshore Constitutional Settlement. The proposal was rejected.

In one of the background documents for the marine strategy for the Manbuynga ga Rulyapa (Arafura Sea) developed by the Northern Land Council in 1995, the fact that there are no Yolngu representatives on the advisory committees for the barramundi, shark, fin fish, mud crab, and beche-de-mer/trepang/sea slug fisheries was criticised. It was noted that the Pearling Industry Advisory Committee was the only fishing industry advisory body with Yolngu representation.¹⁹⁷ In 1993 senior Yolngu from throughout the Northern Territory coastal region resolved to pursue the following actions:

- securing Yolngu representation on the many advisory bodies influencing the management of the Arafura Sea;
- lodging sea closure applications and controlling some access to the water two kilometres from low tide;
- applying to the Aboriginal Areas Protection Authority and the Australian Heritage Commission to have important places for Yolngu in the sea protected;
- supporting Yolngu native title claims to the sea bed, reefs, fishes and water of the Arafura Sea; and
- developing an integrated co-management plan for negotiation purposes with governments.¹⁹⁸

¹⁹⁷ S. Williams, *Manbuynga ga Rulyapa (Arafura Sea): Ownership, management and use issues*, unpub., 1994, pp.1-20 at pp.13-14.

¹⁹⁸ Williams, *Manbuynga ga Rulyapa*, pp.17-18.

The 'senior lawmen' of North East Arnhem Land in late 1994 were seeking negotiations with governments about the following recommendations:

- The seas off the coast of Miwatj (Arnhem Land), between Djimardi (Blyth River) and Wurrunjuyana (the mouth of the Walker River), should be referred to as Manbuyna ga Rulyapa on all new official maps of the area;
- The Australian Government should consult with Yolngu about the northern extent of our interests in the sea;
- A bilateral co-management arrangement with the Federal Republic of Indonesia for the whole Arafura Sea should be pursued by the Australian Government with the assistance of Yolngu;
- The marine protection strategy for Manbuyna ga Rulyapa should continue to be based on the Yolngu management principles of djaagamirr and djaamamirr;
- Governments should acknowledge and support the application of Yolngu law throughout Manbuyna ga Rulyapa;
- Yolngu want to be able to set minimum safety standards for ships using their waters;
- Yolngu want to own and operate commercial fishing enterprises in Manbuyna ga Rulyapa and to have a say in the way these fisheries are regulated;
- Mining proposals for the sea bed and subterraneous minerals should be processed according to the principles of Yolngu customary law.¹⁹⁹

The Northern Territory Government has approved Aboriginal membership on some Fishery Advisory Committees (FAC's), but in early 1996 no agreement had been reached as to what FAC's would be involved or how the three coastal Land Councils would nominate members or agree on membership, and discussions were continuing. It should also be noted also that not all Aboriginal interest groups wish to be consulted through the FAC process.

Queensland

The *Fisheries Act 1994 (Qld)* establishes a Fisheries Policy Council (s.15) to examine and advise the Minister on issues of concern to fisheries resources, fish habitats, on achieving the Act's objectives, on strategic planning and to perform other functions as required: s.16. That Council must meet at least once every six months, and can establish advisory committees. The Queensland Fisheries Management Authority (QFMA) has advised that the Council includes traditional fishing interests.²⁰⁰ The Queensland Fisheries Management Authority is also established under the *Fisheries Act 1994 (Qld)*. QFMA's primary function is to ensure the appropriate management, use, development and protection of fisheries resources through the development of regulations, management plans and declarations, having regard to the principles of ecologically sustainable development, and subject to the possible exercise of the reserve powers of the Minister 'in the public interest'. Another of QFMA's functions is to ensure 'the fair division of access to fisheries resources for commercial, recreational and indigenous use'.

The QFMA has implemented a system of fisheries management plans based on widespread community consultation. The major avenues for this consultation are the Management Advisory Committees (MACs) and Zonal Advisory Committees (ZACs). ZACs are intended to provide local input to the Board of the QFMA on fisheries management issues. There are six MACs established.²⁰¹ These are:

- | | |
|---------------------------|-------------------------|
| • Subtropical Finfish MAC | • REEFMAC |
| • CRABMAC | • Freshwater MAC |
| • TRAWLMAC | • Tropical Finfish MAC. |

All have Aboriginal and Islander representation of one person per committee.

¹⁹⁹ Ginytjirrang Mala with the assistance of A.D.V.Y.Z., *An Indigenous Marine Protection Strategy for Manbuyna ga Rulyapa*, Northern Land Council and Ocean Rescue 2000, Darwin, 1994, p.2.

²⁰⁰ R. Clarke, QFMA, personal communication, 5 October 1995.

²⁰¹ See generally: Queensland Fisheries Management Authority, 'Policy on the Establishment and Operation of Management Advisory Committees and Management Plans', Brisbane, n.d., pp.3-5.

There are 10 ZACs located as follows:

- Gulf of Carpentaria ZAC
- Townsville ZAC
- Rockhampton/Gladstone ZAC
- Sunshine Coast ZAC
- Lake Eyre Catchment Fisheries Advisory Committee (Longreach)
- Far North Queensland ZAC
- Mackay ZAC
- Bundaberg/Hervey Bay ZAC
- Moreton Bay ZAC
- Murray/Darling Catchment Fishery Advisory Committee.

Again Aboriginal and Islander representation is provided for on these bodies.

Whilst the MACs and ZACs provide an important source of input by Aboriginal and Islander people, it is acknowledged by the QFMA that more direct consultation with Aboriginal and Islander people is required, particularly at the local community level. At present an annual meeting is held by the QFMA with Aboriginal elders from the Gulf of Carpentaria and western side of the Cape. It is hoped to be able to extend these types of meetings so that they occur on a similar scale and more comprehensively around the coast.

New South Wales

The *Fisheries Management Act 1994 (NSW)* establishes a Total Allowable Catch Setting and Review Committee (TAC Committee) which comprises at least 4 members, including a chairperson appointed by the Minister (who is neither engaged in the administration of the Act nor engaged in commercial fishing); a natural resource economist; a non-government fishery scientist and persons appointed by the Minister who have appropriate fisheries qualifications: s.27. Before setting total allowable catches, public consultation is required: s.31.

The Act also establishes a New South Wales Commercial Fishing Advisory Council (CFAC). Its membership is to comprise a chairperson appointed by the Minister, 2 members representing each of the regions prescribed by regulations and one member representing each of the sectors of the fishing industry prescribed by the regulations: s.230. Regional members are to be appointed by the elected members of the CFAC Regional Advisory Committee: s.230(3). CFAC Regional Advisory Committees are to comprise 10 (or as prescribed by regulation) elected by persons holding commercial fishing licences.

The Act also establishes a NSW Recreational Fishing Advisory Council appointed by the Minister from members of prescribed organisations: s.238. Those organisations include the New South Wales Game Fishing Association Inc., New South Wales Fishing Clubs Association Inc.; Australian National Sportfishing Association (New South Wales Branch); The North and North West Amateur Fisherman's Association; Institute of Freshwater Anglers (New South Wales Branch) and the Australian Fishing Tackle Association Inc.: Reg. 267.