

**SUBMISSION TO
NORTHERN TERRITORY GOVERNMENT
DEPARTMENT OF THE ENVIRONMENT AND NATURAL
RESOURCES**

**ON
COASTAL AND MARINE MANAGEMENT STRATEGY 2018**

**BY
NORTHERN LAND COUNCIL**



Northern Land Council

The Northern Land Council

The Northern Land Council (NLC) is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) and a Native Title Representative Body under the *Native Title Act 1993* (NTA).

The NLC has legislative responsibility for assisting Traditional Owners in acquiring and managing their traditional land and sea estates to support sustainable management that provides for the health, cultural and social, economic and political wellbeing of Aboriginal communities across the Top End of Northern Territory. The NLC region covers inclusively land and sea estates within the Top End of the Northern Territory, including offshore. Its Full Council constitutes 83 members representative of seven regions in the Top End.

The NLC appreciates the opportunity to comment on the *Coastal and Marine Management* discussion paper.

Executive Summary

This submission to the Department of Environment and Natural Resources (DENR) regarding the draft Coastal and Marine Management Strategy considers the views, rights and interests of Traditional Owners in the management of Sea Country and associated coastal areas. Our considered recommendations and comments are provided to assist DENR develop a meaningful and consistent holistic view for management of our natural and cultural heritage in these areas.

There has been limited involvement of, or attempts to engage, Traditional Owners and knowledge holders of the Northern Territory coastal and marine areas during the formulation of this draft strategy. At present, approximately 85% of the coastal and intertidal habitat of the NT is inalienable Aboriginal freehold land under the Commonwealth *Aboriginal Land Rights Act (1976)*, and as confirmed by the Blue Mud Bay decision of the High Court in 2008. We strongly recommend that DENR consider a far greater effort be made in engagement and consultation with the rightful landowners of the coastal margin of the NT in formulating an informed Coastal and Marine Management Strategy. The sustainable use of resources of sea country has been managed by Indigenous people in Australia for millennia. As such, the NLC views conservation as being inclusive of cultural and heritage values, as recognised under the *Convention for Biological Diversity* (CBD) from which the *Environmental Protection of Biodiversity Conservation Act* responds (Articles 8(j) & 10(c)).

Cultural values are part of land and sea country, and cannot be dissected from natural values. NLC has concerns regarding the adequacy of the draft management strategy in protecting natural and cultural values significant for Traditional Owners and recognising the

rightful landowners and their livelihoods associated with these areas. In 2012, a national Indigenous forum on Sea Country management called for future governments to remove all impediments to fully involve Indigenous people in the management of their marine estates. This statement references the rights of Indigenous peoples under the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) and is consistent with the CBD. As such we strongly recommend that the future actions around this management strategy, including the implementation strategy, should place Aboriginal people at the centre of relevant stewardship and partnership programs.

It is strongly recommended that engagement and consultation with the rightful landowners be undertaken, as the draft strategy will be a more comprehensive and better informed document for this process. Whilst the NLC is the statutory body for assisting Traditional Owners in acquiring and managing their traditional land and sea estates, individual landowner groups have specific rights and interests in sea country management that should be represented in this strategy. The NLC provides the following recommendations aimed at protecting the rights and interests of Traditional Owners and maximising their opportunities for engaging in and benefiting from the development and implementation of a Coastal and Marine Management Strategy.

In particular, we very strongly support and encourage greater commitment to the engagement and involvement of Indigenous Rangers as managers of sea Country, including undertaking monitoring and research activities, compliance, fisheries management and protection of cultural values to ensure the sustainability and management of marine and coastal habitats and resources. We offer the following comments in specific reference to the draft strategy to assist in developing a document that better represents the rights and interests of Aboriginal people in the Northern Territory.

Note that the references to sections of the draft strategy represent the layout of the original document.

Recommendations

2. Who is responsible for managing our coasts and seas?

Approximately 85% of the NT coastline is inalienable Aboriginal freehold land under the Commonwealth *Aboriginal Land Rights Act* (1976). As confirmed in the Blue Mud Bay High Court decision of 2008, Aboriginal landowners have rights to the low tide mark, and the right to control access to waters over this land. Aboriginal landowners also control access by land to these coastal areas.

Section 2 of the discussion paper acknowledges Aboriginal people as owners and managers of the majority of the NT coastline. However, these property rights are not reflected in the remainder of the strategy, which frames Aboriginal landowners as stakeholders. Nor were they evident in the development of the strategy, which occurred without any consultation with Traditional Owners.

Further, Aboriginal people currently hold non-exclusive native title over two areas of sea in the NT, and potential claims over much larger areas. This should be recognised and considered in the strategy and implementation plan.

The strategy should also include a reference to the important contribution of sea country to livelihoods for Indigenous people. It is well established that Indigenous people and coastal communities draw significantly from the oceans and coasts for their livelihood through sustainable use of traditional resources. In many cases this access to resources is crucial given the price and availability of equivalent food resources; socio-economic analysis suggests that for a moderate sized community this could easily total some hundreds of thousands of dollars per year (Buchanan et al. 2009).

This point could be re-iterated on page 6 in the summary of socio-economic values that the coastal and marine ecosystems support.

3. What is special about Northern Territory coast and seas

Discussion point 2: Are there any other environmental, social, cultural and economic values and benefits do we need to consider when developing the Strategy?

In line with the above, the NLC recommends that the strategy needs to reflect the fact that coastal and marine environments support the livelihoods of a great number of Aboriginal people. This includes people's day to day existence, as well as there being the important cultural connection to sea country, specific sacred sites and totemic animals associated with these places.

Note that on p4, in the bubble: “Sacred sites are places within the landscape that have a special meaning or significance under Aboriginal tradition. In coastal and sea areas, sacred sites may include features which lie **both and** above the water”, the word ‘below’ appears to have been omitted.

4. Opportunities to benefit even further from our coasts and seas

- “The NT is unique in that it has fish stocks that are underutilised and have scope for development and industry growth.”

In regards to this point raised about the status of commercial fish stocks as *underutilised*, there is no contribution to this paper from the key government agency responsible for the management of commercial fisheries and other fish stocks under the NT Fisheries Act (1988). This omission means that statements about coastal and marine management strategies around the use of commercial and recreational fish stocks have limited authority. Detailed, accurate information is vital to informing management plans and agreements for tidal waters over Aboriginal land (as referenced in the Blue Mud Bay decision), which represents around 85% of the NT coastline. There is an opportunity to involve landowners in discussions in regards to access, development of commercial opportunities and maintenance and support of livelihoods of Indigenous people living on and utilising coastal and marine ecosystems.

There have been repeated calls from traditional owners affected by the Blue Mud Bay decision that appropriate resources are provided for people to make informed decisions about local management planning for aquatic resources. There is a common pattern in many coastal areas throughout the world whereby access to marine resources becomes more difficult and more costly over time due to localised depletion. People then need to fish further offshore and/or further away from population centres to obtain similar catches. For most Indigenous people of the NT, this is neither desirable nor feasible due to land ownership and financial constraints.

Development of marine and aquatic resource management plans has to involve Indigenous landowners and government agencies responsible for the administration of the relevant Acts.

Discussion point 3: What are the major opportunities to protect and sustainably develop our coast and seas?

It should be noted that Aboriginal people want to be part of the NT economy and improve their prosperity through ethical business ventures, and connections to international trade.. Opportunities for Aboriginal people to derive economic benefits from their property rights, through sustainable business ventures, should be explored and supported.

5. Challenges we need to prepare for

Discussion point 4: Do these challenges reflect the key issues in our coasts and seas?

Traditional Owners have concerns about the future of their coastal resources from natural and non-natural impacts. Biodiversity conservation and dealing with the impacts of climate change are key issues that impact all aspects of Aboriginal livelihoods and cultural practices (refer to the recommendations in NLC's submission to the Senate Committee Inquiry on current and future impacts of climate change on marine fisheries and biodiversity).

In considering potential damage to cultural heritage and sacred sites, active cultural conservation should be undertaken to protect sacred sites and dreaming tracks, including potentially through closing areas.

Commercial activities such as off-shore oil and gas may present both a threat and an opportunity for coastal Traditional Owners.

6. Goal and guiding principles

“Aboriginal ownership, obligations and cultural values must be recognised and, traditional lifestyle practices sustained.”

Suggest the addition of *livelihoods* into this statement about goals. Modern day livelihoods are an important part of living in coastal communities and this better reflects the realities of Indigenous experience as well as the notions of traditional lore and culture being maintained.

7. The objectives of coastal and marine management

P10, Improve our knowledge: “Traditional knowledge has been developed from experience gained over the centuries.” This should read “millennia” not “centuries”, given the time scale of Indigenous occupation.

8. What outcomes are needed to achieve these objectives?

Celebrate our culture

Recommend that the wording includes a specific reference to Indigenous livelihoods as well as cultural recognition of values and connection to sea country.

Foster sustainable industry (*Fishing stocks are healthy and managed to ensure sustainability*)

In terms of sustainable management of ecosystems including fisheries, there is no mention of the use of third party sustainable fishing accreditation schemes such as MSC. There would be a role for these independent parties and organisations to be involved and be encouraged through this document. It should be noted that this assessment process also includes socio-economic criteria (MSC Fisheries Standard and Guidance, 2014) which can be specifically adjusted for the unique conditions found in the Northern Territory with regards to traditional ownership and connection to sea country of indigenous Australians.

Maintain our unique lifestyle (*Recreational opportunities (including fishing) are abundant for all Territorians*)

This statement excludes the notion that recreational opportunities are for all users, not just Territorians. Given the high volume of tourism in the NT and the explicit goal of increasing tourism opportunities as a means of sustainable economic development in the NT, perhaps this term can be made less exclusive.

(*Traditional Owners can continue to sustainably utilise coastal and marine resources to maintain their lifestyles*)

We suggest ‘lifestyle’ be changed to ‘livelihoods’ to better reflect contemporary Indigenous experience and avoid politicised response to “lifestyle choices” commentary.

Improve our knowledge

In both this section and the previous section whilst there is a mention of traditional ecological knowledge (TEK) there is no recognition of it in anyway contributing to sustainable management on a local-scale or otherwise. We think that this is remiss and also contradicts the points about recognition of Indigenous culture and lore, which have the knowledge embedded in them. The basis of two-way knowledge systems is built upon the premise that the two systems (traditional and western scientific) both have roles to play and can contribute to modern day understanding of ecosystem processes and be incorporated into management processes. At present the sections on ‘improve our knowledge’ seem to be solely based on evidence-based scientific process. This would seem to be a missed opportunity to engage and work with the landowner groups who currently own circa 85% of the NT coastal areas.

10. The path to a final Strategy – actions and implementation

This section has the greatest relevance for all costal and marine users as the development of the implementation strategy and its execution will have the greatest role to play in sustainably managing coastal communities and ecosystems. It is imperative that this stage is adequately resourced and processes are clearly identified for identifying the traditional owners and knowledge holders for specific areas of Indigenous owned land.

One of the tangible benefits in greater engagement and consultation with traditional owners of the coastal estates of the NT would be a better understanding about how landowners would like to proceed in developing collaborative management groups. There is a real need for greater engagement of Indigenous people on representative bodies of management, which will require a considerable investment in governance training and capability development over time. The NLC, along with the other coastal representative land councils, will play a significant role in development and implementation of this strategy. In regards to partnership development, the principles of engagement, representation and terms of reference will need careful consideration. Whether or not these partnerships are formally structured through third party entities (e.g. MSC for fisheries management), they will need to represent the specific interests of local landowner groups. It is imperative that all relevant agencies administering the relevant legislative Acts are engaged and involved.

References

Buchanan, G. et al (2009). "Always part of us- the socioeconomics of indigenous customary use and management of dugong and marine turtles: a view from Bardi and Jawi sea country, Western Australia". NAILSMA knowledge series, pp. 100,
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